

1 STATE OF NEW YORK
 2 COMMISSION ON PUBLIC INTEGRITY
 3 =====
 4 In the matter of
 5
 6 An Investigation into the Alleged
 7 Misuse of Resources of the Division
 8 of State Police
 9 =====

6 Commission on Public Integrity
 7 Alfred E. Smith Building
 8 80 South Swan Street, Suite 1147
 9 Albany, New York 12210-8004

8 October 4, 2007
 9 1:08 p.m.

10 STENOGRAPHIC RECORD of an Investigative
 11 interview under oath conducted pursuant
 12 to notice.

12 INTERVIEWEE: PRESTON L. FELTON, Superintendent
 13 New York State Police

14 APPEARANCES: For the Commission:
 15
 16 HERBERT TEITELBAUM, ESQ.
 17 Executive Director

17 MEAVE M. TOOHER, ESQ.
 18 Investigative Counsel

18 JOAN P. SULLIVAN, ESQ.
 19 Investigative Counsel

20 PRESENT: ROBERT SHEA, Investigator
 21
 22 GLENN VALLE, ESQ., Chief Counsel
 23 New York State Police

24 REPORTED BY: BETH S. GOLDMAN, RPR
 25 Certified Shorthand Reporter

1 PRESTON L. FELTON,
2 called to appear before the Commission, and being
3 duly sworn/affirmed by the Notary Public, was
4 examined and testified as follows:

5 EXAMINATION BY MS. TOOHER:

6 Q. Would you state your full name for the
7 record, please.

8 A. Preston L. Felton.

9 Q. Where are you currently employed?

10 A. New York State Police.

11 Q. And, what is your position there?

12 A. Acting Superintendent.

13 Q. And you are here voluntary today; is that
14 correct?

15 A. No. I believe I am here under a subpoena --
16 or not a subpoena, but I was instructed to be here
17 on this date. But I didn't have a problem
18 appearing.

19 Q. But you are not here pursuant to subpoena;
20 is that correct?

21 A. No, I am not.

22 MS. TOOHER: Before we go forward,
23 Glenn, would you like to put your appearance on
24 the record.

1 MR. VALLE: My name is Glenn Valle. I
2 am Chief Counsel for the New York State Police. I
3 am here as counsel for the agency, not as
4 individual counsel for Acting Superintendent
5 Preston Felton. I am here to render any
6 assistance with regard to the legal policies or
7 procedures that our agency has in place. I
8 appreciate the opportunity.

9 MR. TEITELBAUM: Superintendent, you are
10 aware that if you had wished, you could have had
11 counsel on your behalf present?

12 INTERVIEWEE: Yes, sir.

13 BY MS. TOOHER:

14 Q. And, you just said you are Acting
15 Superintendent at the State Police right now. How
16 long have you served in that position?

17 A. Approximately seven months.

18 Q. And I understand you have expansive duties,
19 but could you give us just a thumbnail sketch of
20 your responsibilities in that regard.

21 A. I am the commanding officer, and head of the
22 State Police. As part of my duties I manage a
23 Police Department of approximately 6,000 people,
24 4,900 sworn personnel all of whom are police

1 officers and approximately 1,100 to 1,200 civilian
2 employees.

3 Q. How long have you been employed with the
4 State Police?

5 A. Just short of 26 years.

6 Q. And what position did you serve in prior to
7 Acting Superintendent?

8 A. First Deputy Superintendent, which is my
9 legal current position. But due to the fact that
10 there is no duly confirmed Superintendent the
11 First Deputy Superintendent who is second in
12 command at the agency acts as Superintendent in
13 that absence.

14 Q. Who is responsible for naming you as Acting
15 Superintendent?

16 A. Actually, the law is responsible for naming
17 me as Acting Superintendent. The Governor
18 designated me Interim Superintendent, but there is
19 no such legal designation in the law. So, by my
20 position as First Deputy I serve as Acting
21 Superintendent until a replacement for the
22 Superintendent is named or confirmed.

23 MR. VALLE: If I may, for legal
24 clarification, there is no authority for the

1 Governor, absent the legislature out of session to
2 appoint an Interim Superintendent or Acting
3 Superintendent for the State Police. Pursuant to
4 our regulations in the NYCRR the First Deputy
5 Superintendent in the absence of the
6 Superintendent automatically assumes the position
7 of Acting Superintendent. The Governor has not
8 nominated any individual. After nomination the
9 Senate at the time does confirm the authority of
10 the person to act as Superintendent.

11 Q. In your capacity as Acting Superintendent
12 first since serving in this position have you had
13 experience with FOIL?

14 A. No. In my position as Acting Superintendent
15 I don't handle FOIL requests.

16 Q. And in your service with the State Police
17 have you ever worked on FOIL requests?

18 A. Yes, I have.

19 Q. Can you tell me what that experience is?

20 A. When I was Station Commander in S.P. Monroe,
21 which is located in Orange County -- it's the Zone
22 2 headquarters -- I would occasionally get a
23 request from the Records Access Officer to gather
24 records under a FOIL request that our agency

1 received and then send them to headquarters.

2 Q. In those instances where you would be asked
3 to gather records by the Records Access Officer
4 would you be provided a copy of the FOIL request?

5 A. No.

6 Q. What would happen?

7 A. They would generally call down and say:
8 Send us certain records. It may be an arrest
9 report. Sometimes it would be a radio log, those
10 types of documents that are kept at our station.

11 Q. So, they would make a request for specific
12 documents?

13 A. Yes.

14 Q. And would they always identify that this was
15 a FOIL request that they were requesting these
16 documents for?

17 A. To the best of my knowledge, yes. We are
18 talking some time ago, so -- probably 15 years
19 ago, so I can't be exactly sure. But, to the best
20 of my knowledge, yes.

21 Q. Are you familiar with the FOIL protocol at
22 the State Police?

23 A. I am somewhat familiar with it, yes.

24 Q. What is your understanding of the protocol?

1 A. My understanding is that we deal with two
2 levels of records. A FOIL would come to the
3 Records Access Officer. That request, pursuant to
4 our rules and regulations is it should be in
5 writing. Then, there is a request that can be
6 conveyed to interview or to examine what we used
7 to call our station blotter. And those records
8 can be examined by an oral request. We no longer
9 have station blotters in our stations, so we -- it
10 really no longer applies.

11 The oral request usually occurred with
12 media sources coming in every day and asking to
13 see who was arrested on the overnight.

14 Q. But the oral requests were limited to
15 particular areas or documents?

16 A. The station blotter.

17 Q. Solely the station blotter?

18 A. Yes.

19 Q. And what is your understanding as to what
20 happens following the FOIL request coming in?

21 A. I don't understand your question.

22 Q. You indicated it goes to the Records Access
23 Officer.

24 A. The Records Access Officer then makes a

1 determination to release that document or those
2 documents and then provides them to the requesting
3 party or denies them to the requesting party.

4 Q. Okay. And, when the Records Access Officer
5 makes a determination as to whether or not
6 documents should be released, do you know what
7 types of consideration go into that?

8 A. I know one of the considerations is privacy.

9 Q. When you say "privacy" what are the factors
10 that are considered under that?

11 A. If there is information in the document that
12 would invade someone's privacy or that may expose
13 someone to danger, that type of thing.

14 Q. Can you give me an example of those types of
15 documents?

16 A. Domestic incident report with, you know, a
17 victim's name, date of birth, and address on them.

18 Q. Are there any other considerations beyond
19 privacy? Security interests?

20 A. There may be at times different security
21 interests.

22 Q. What types of interests are those?

23 A. Whether you would expose someone to danger.

24 Q. What type of information would you consider

1 under that type of criteria?

2 A. I would have to know personally what the
3 circumstances were and what type of document we
4 are dealing with for me to answer that.

5 Q. Does the FOIL officer make those
6 determinations?

7 A. I would say generally, yes, sometimes in
8 consultation with our Counsel's office.

9 Q. Now, you indicated that the FOIL requests go
10 to the records access officer. Who is that in the
11 State Police right now?

12 A. Captain Lori Wagner.

13 Q. And do all requests go to her initially, or
14 do they flow to her by a process?

15 A. Some requests go -- may go first to our
16 counsel's office. Some requests sometimes are
17 made to our PIO initially, and then the PIO will
18 consult with our counsel. Generally, the Records
19 Access Officer handles everyday stuff of the
20 agency.

21 Q. So, the Records Access Officer doesn't get
22 all FOIL requests?

23 A. Some requests may go to counsel's office,
24 the more sensitive stuff.

1 Q. And when we say "the more sensitive stuff"
2 would go to Counsel's office, would it go directly
3 to Counsel's Office or would it go to the Records
4 Access Officer first?

5 A. It can work both ways. If she gets one that
6 she deems that she needs counsel's input on, she
7 will go to counsel. If counsel gets one that is
8 sensitive they will handle that, usually gather
9 the records and then consult with her on, you
10 know, how to disperse the records when requested.
11 That is my understanding of what happens.

12 Q. I understand. Generally -- or, I'm sorry,
13 more specifically, even if Counsel's Office is
14 handling what you termed a more sensitive request,
15 it still goes through the Records Access Officer
16 for dispersement of the documents?

17 A. That, I can't answer because I don't handle
18 the FOIL requests. I mean that is generally
19 between the PIO and Records Access and Counsel's
20 Office.

21 Q. And you indicated the "more sensitive
22 requests." Could you explain to me what a more
23 sensitive request would be?

24 A. It can be, you know, a notable case, you

1 know, a homicide case that may still be open. We
2 would look at that and we would say, you know --
3 counsel would look at that and say we can't
4 release this. It's an ongoing investigation.
5 It's not every day guys are looking for blotter
6 entries. It's not every day a guy is looking for
7 an arrest report, that type of stuff.

8 Q. Are there other types of criteria that can
9 make a document request, a FOIL request sensitive?

10 A. I'm sure there are. If we receive document
11 requests for, you know, public officials,
12 well-known celebrities. I remember a couple of
13 years ago now we received a request under FOIL for
14 information regarding a call that Christopher
15 Reeve's wife made to our 911 center; those types
16 of things.

17 Q. So, you mentioned public officials. Would
18 requests concerning the Governor be considered a
19 sensitive request?

20 A. Yes.

21 Q. And would requests concerning Senator Bruno
22 be considered a sensitive request?

23 A. Probably, yes.

24 Q. And in that context what makes those

1 requests sensitive?

2 A. The public official; you know, it's
3 obviously an issue that can become, you know,
4 contentious.

5 Q. When you say "contentious" what do you mean
6 by that?

7 A. It could, you know, create problems for the
8 agency.

9 Q. What sort of problems?

10 A. Well, no public official is happy when some
11 of the information is released about them.

12 Q. When you say "no public official is happy"
13 what type of information are we talking about?

14 A. It has been my experience that pretty much
15 anything you release about them they are generally
16 not happy about.

17 Q. And on that type of request concerning a
18 public official, you would consider that as a
19 sensitive request, so that is a request that you
20 believe would go through Counsel's Office?

21 A. Yes.

22 Q. And, have there been any changes in the FOIL
23 protocol since 2007 or since you started as Acting
24 Superintendent?

1 A. There has been no changes in our FOIL
2 protocol. However, the Spitzer administration is
3 taking a little -- probably the best way to put it
4 is a little bit more transparent view of the way
5 records should be handled in agencies.

6 Q. What do you interpret that to mean, "a more
7 transparent view"?

8 A. They want us to be more open with the
9 public. The State Police -- we as an agency have
10 a reputation of being a kind of closed with regard
11 to FOIL requests. I'm sure you are familiar with
12 Bob Friedman. He called our FOIL policy requests
13 in the past "criminal." I beg to disagree with
14 him, but we are a little bit more restrictive than
15 most people would want us to be.

16 Q. And how has the Spitzer administration
17 relayed to you this transparency change?

18 A. A number of ways. Early on, when I took
19 over they made it very clear to me that they were
20 for transparency and ethics in government; that we
21 have to be responsive to the people.

22 Q. When you say "they made it clear to you,"
23 who made it clear to you?

24 A. The Governor himself made it clear to me,

1 and all of his aides that I talked to.

2 Q. Can you name particular individuals?

3 A. I talked to so many, so I couldn't tell you
4 who exactly said it.

5 Q. Let's take the Governor, for example. What
6 did he say to you directly concerning transparency
7 on the FOIL policy?

8 A. He didn't say this directly on the FOIL
9 policy. Let's be clear on that. What he said was
10 he wanted an administration that was ethical and
11 transparent to the people.

12 Q. So, the kinds of statement he was making
13 publicly concerning transparency in his
14 administration?

15 A. Yes.

16 Q. But, he never specifically spoke to the FOIL
17 policy of the State Police?

18 A. No.

19 Q. What about his aides?

20 A. His aides also stressed the ethics in
21 government, transparency, from the first day that
22 they met with me and that as a public official I
23 would have to conduct myself in an open and
24 ethical manner.

1 Q. Do you recall who you had these
2 conversations with?

3 A. I met with a number of people. I met with
4 Rich Baum, Olivia Golden, Bill Howard.

5 Q. And what did Richard Baum say to you in this
6 regard?

7 A. Pretty much the same thing, transparency and
8 ethics in government.

9 Q. Did he speak to the FOIL process and release
10 of documents?

11 A. No. I have had no discussions myself with
12 anybody in the Spitzer administration with regard
13 to FOIL.

14 Q. What about the release of documents? Have
15 you had any conversations concerning release of
16 documents by the State Police with the Spitzer
17 administration?

18 A. I have not had any specific conversations
19 with them. I am aware that -- I believe back in
20 March there was a request for documents from a
21 media source here in Albany who cited the
22 Governor's theme of transparency in government.
23 After we told him we would not provide him with
24 certain documentation, later that day, I believe

1 it was Paul Larabee in the Governor's Press Office
2 called and said send him the documents and he
3 would release the documents to the press source.

4 Q. Now, why did you not want to release the
5 documents to the press source?

6 A. It wasn't a question of not wanting to
7 release them. It was a question of wanting the
8 request in writing like we would always do.

9 Q. So, you were looking to follow the State
10 Police protocol?

11 A. Yes.

12 Q. And, in that instance, was this, do you
13 know, the request from Fred Dicker?

14 A. I believe it was.

15 Q. Just for ease, we will call it the March
16 Dicker request. And, when Mr. Dicker made his
17 request in March did he make that request in
18 writing?

19 A. To the best of my knowledge, no.

20 Q. And, Mr. Larabee intervened in some way?

21 A. That is my understanding.

22 Q. And who his Mr. Larabee?

23 A. He is one of the press secretaries in the
24 Governor's Office.

1 Q. And in that instance what is your
2 understanding of what happened?

3 A. My understanding is our PIO said: Fine,
4 discussed it with me. And I said, "If that's the
5 way they want to handle it, that's the way we will
6 have to go along with that."

7 Q. Who is your PIO?

8 A. Glen Miner.

9 Q. What did Glen Miner say to you about this
10 request?

11 A. He basically told me he had received a
12 request from Dicker, told me he asked to submit a
13 file request in writing. Dicker quotes the
14 transparency in government. Calls the press
15 office. The press office calls Valle. Calls Miner
16 and says: Send them the documents and they will
17 make a determination as to whether to release it
18 to Dicker.

19 Q. Even though you were aware of the
20 transparency in government, you were still abiding
21 by State Police protocol as far as the request to
22 the State Police?

23 A. We were trying to abide by the State Police
24 protocol.

1 Q. And what is the purpose of the protocol in
2 that instance when you get a request like that
3 from the media?

4 A. Well, I think for us, we would like
5 documentation that, you know, they are asking for
6 documents. And we also would like clarity on what
7 they are asking for. You know, we don't want to
8 release something that we shouldn't be releasing.
9 We want to make sure, you know, that it's a
10 legitimate request.

11 Q. And I think you mentioned earlier that there
12 are certain considerations that go into releasing
13 documents under FOIL. There is security
14 consideration.

15 A. Yes.

16 Q. And there are privacy considerations. Part
17 of this protocol is to protect these
18 considerations and make sure they are adhered to?

19 A. Yes.

20 BY MR. TEITELBAUM:

21 Q. Superintendent, in the case of a situation
22 which the Records Access Officer is reviewing a
23 FOIL request, I believe you testified that -- I
24 think it's a woman?

1 A. Yes, sir.

2 Q. She would sometimes release it and sometimes
3 not release it; right?

4 A. Yes.

5 Q. Are there times that the Records Access
6 Officer would release a document in redacted form?

7 A. That's true.

8 Q. Okay. Is it fair to say that when that
9 happens, the Records Access Officer might be
10 deleting information that could implicate privacy
11 or security and leave intact information that
12 doesn't; is that fair?

13 A. Yes, sir.

14 Q. You also said that the State Police was
15 perceived, at least in some quarters, as being
16 more restrictive as to releasing of documents.

17 A. Yes.

18 Q. And I would appreciate your elaborating on
19 that. When you say -- I think the statement is
20 "more restrictive" tell us what you mean by that.

21 A. What I mean by that is we are a police
22 agency. We recognize that most of this
23 documentation that we deal with is -- has issues
24 like security, like privacy. So, we don't want to

1 expose people to having their privacy violated or
2 to put them at risk. So, what we do is, we are
3 very careful when we release stuff to make sure
4 those risks are addressed before we do that. We
5 are never going to be -- In past administrations
6 I don't think you are going to hear anyone say we
7 were a friend of FOIL. But, as you know, FOIL has
8 evolved somewhat. We now work under a different
9 administration who is more open with the public.
10 They have done everything from things like this:
11 Send us the documents and we'll make a
12 determination to give it out to open up the second
13 floor, less security at the Capitol to, you know,
14 the things that we have to deal with. I am a big
15 believer in transparency in government. I don't
16 think we should hide from anything. Like I said,
17 I'm not willing to invade someone's privacy or let
18 it be invaded.

19 Q. With the change of administration is it fair
20 to say that you didn't become -- by "you" I mean
21 the State Police, obviously -- didn't become less
22 diligent in vetting documents to see whether they
23 should be released or whether they should be
24 withheld

1 A. No, sir --

2 Q. In whole or in part because of issues of
3 privacy or less diligent?

4 A. No, sir.

5 BY MS. TOOHER:

6 Q. Do you know Bill Howard in the executive
7 chamber?

8 A. Yes.

9 Q. What is your relationship with Mr. Howard?

10 A. My relationship for right now is I know Mr.
11 Howard. In the past he was my supervisor.

12 Q. When you say "in the past" how recently?

13 A. Early July. Up until early July he was my
14 supervisor in the executive chamber. He was the
15 Assistant Deputy Secretary for Homeland Security
16 and I reported directly to him.

17 Q. And, how long did you have that reporting
18 relationship with Mr. Howard?

19 A. I had that reporting relationship with him
20 probably for about five months. I had been
21 familiar with Bill Howard for about ten years.

22 Q. How did you know him over that time frame?

23 A. As First Deputy Superintendent I dealt with
24 him probably on a daily to weekly basis sometimes.

1 Q. In what capacity?

2 A. In the Pataki administration he was the
3 First Deputy Secretary to the Governor, so he was
4 the person who generally ran what is known as
5 State Operations.

6 Q. And how does that relate to the State
7 Police?

8 A. We come under the operations of the
9 executive chamber. I mean our agency fits under
10 him. The Superintendent was a direct report to
11 Mr. Howard on one end and Chauncey Parker on the
12 other.

13 Q. And you were Deputy Superintendent at that
14 time?

15 A. First Deputy Superintendent commanding the
16 agency.

17 Q. What was your reporting relationship to Mr.
18 Howard?

19 A. My relationship, reporting relationship was
20 that in the absence of the Superintendent he would
21 call me to get things done. I also dealt with him
22 fairly frequently because the position of the
23 First Deputy Superintendent handles the Governor's
24 Protection Unit, and the First Deputy under

1 Superintendent Bennett also handled the aviation
2 unit.

3 Q. So, you dealt with Mr. Howard on issues of
4 the Aviation Unit as well as the Governor's
5 protection unit?

6 A. That, in addition to different operational
7 issues. Whatever the Superintendent was dealing
8 with Mr. Howard on, if he couldn't reach the
9 Superintendent he reached me. If the
10 Superintendent was out of the office and he
11 called, he would put is call in to me.

12 Q. And, were you responsible for the aviation
13 unit at that time?

14 A. At which time?

15 Q. During the time that Mr. Howard was with the
16 Pataki administration.

17 A. Yes, for most of that time.

18 Q. In what time frame?

19 A. I was responsible probably sometime in 2004
20 up until I became Acting Superintendent.

21 Q. So, up until 2007?

22 A. Yes.

23 Q. And what were your responsibilities with
24 regard to the aviation unit?

1 A. To basically manage it and oversee it, to
2 make sure they were operating and using their
3 resources correctly.

4 Q. Did that include flights on the State Police
5 helicopter and use of state planes?

6 A. Yes.

7 Q. What were your responsibilities in that
8 regard?

9 A. I would approve all State Police related
10 travel on division aircraft with the exception of
11 that for the Superintendent. The only other
12 exception would be emergency travel in law
13 enforcement, if there is a law enforcement issue
14 where they needed an immediate flight and any
15 State Police Colonel or the aviation unit had
16 authority to put aircraft in the air. But for the
17 general, everyday travel of State Police members
18 and executives, all of that had to go through me.

19 Q. Did you have any role in executive travel
20 with the aviation unit?

21 A. I was sometimes advised of executive travel,
22 but I have no role in approving or disapproving
23 executive travel for executives outside of the
24 State police.

1 Q. So, travel for the Governor, Lieutenant
2 Governor, Senator Bruno, wasn't within your
3 command or control while you were serving in that
4 position?

5 A. No.

6 Q. And, when you say you were familiar with it,
7 you might be aware that a particular trip was
8 occurring --

9 A. Yes.

10 Q. -- but you didn't get involved in the
11 approval process at all?

12 A. Absolutely no. No involvement with that
13 whatsoever.

14 Q. Were you aware of what the approval process
15 was during that time frame?

16 A. Yes.

17 Q. What was your understanding of the approval
18 process during the Pataki administration?

19 A. The requesting person would make a -- I
20 don't know if application is the right word, but
21 make a request to the executive chamber. A member
22 of the executive chamber would generally approve
23 that flight. They would sign off on the sheet.
24 Then, they would send that over to aviation with

1 the approval for the flight to occur.

2 Q. Was Mr. Howard involved in that process, to
3 your knowledge, during the Pataki administration?

4 A. He may have been. But my recollection is
5 that the Secretary to the Governor kind of had the
6 final say on that approval.

7 Q. Do you recall who that was?

8 A. John Cahill.

9 Q. And, were you aware of anything having to do
10 with executive travel and ground travel during the
11 Pataki administration?

12 A. Yes.

13 Q. What was your role in that regard?

14 A. We generally provided ground travel to one
15 individual, Senator Joseph Bruno, in connection
16 with an approved helicopter flight to New York
17 City.

18 Q. And, was this on one occasion or fairly
19 regularly? How often would that happen?

20 A. It happened on multiple occasions. The
21 exact number I do not know. But I can tell you
22 sometimes it was frequent. Sometimes we wouldn't
23 get them for awhile. It would go back and forth.

24 Q. And, the ground travel with Senator Bruno

1 you indicated it would be in relation to an
2 approved helicopter flight; is that correct?

3 A. Yes.

4 Q. How would you be notified of that?

5 A. I would generally get the notice. One of
6 Bruno's secretaries would fax us itinerary of what
7 the proposed trip was. And if it was a
8 last-minute thing, she would generally call us.

9 Q. And when you say she would fax you an
10 itinerary, this would be to you directly?

11 A. She would fax it to my office; not directly
12 to me, to my office.

13 Q. What would you do with that?

14 A. I would generally call down to New York City
15 to the Troop Commander and advise him Senator
16 Bruno is coming down, assign however many
17 personnel that he would request and an additional
18 number of cars to handle that request.

19 Q. And what type of information would be in the
20 itinerary?

21 A. Generally, it would say something like:
22 Flight leaving Exit 23. That's the heliport at
23 the Thruway headquarters, and the ship number is
24 --

1 Q. The tail number?

2 A. Tail number 430NY or whatever, what time he
3 is leaving, who is traveling with him, where they
4 are going to the City. Generally it was one of
5 three places: West 30th, East 34th, or Wall
6 Street. And, then, there would be a number of
7 times and locations and --

8 Q. I'm sorry to interrupt. When you say "where
9 he is going in the city," you mean 00?

10 A. Where the helicopter is going to be landing.
11 Then, there would be a number of times and
12 different locations. It may say: 2:30, Sheraton
13 Hotel. 4:00, some restaurant. 5:30, dinner; that
14 type of thing.

15 Q. And, what would you do physically with that
16 itinerary once it was provided to your office?

17 A. Generally, I would fax it down to our New
18 York City headquarters.

19 Q. And did you regularly receive these
20 itineraries when you received a travel request
21 from Senator Bruno?

22 A. Yes.

23 Q. And, to your knowledge, were those
24 itineraries ever released pursuant to a FOIL

1 request?

2 A. That, I don't know.

3 Q. Well, so to your knowledge, they were not
4 released? I'm not saying they may not have been,
5 but you don't know of any instance when they were
6 released pursuant to a FOIL request?

7 A. The only instance I know of them being
8 released is the instance back in early July.

9 Q. We'll get to that, but right now we are
10 talking about under the Pataki administration.

11 A. Again, I don't know if they were ever
12 released under the Pataki administration.

13 Q. And, has there been any change, to your
14 knowledge, in the protocol for requesting ground
15 travel associated with executive flights?

16 A. There has been no change that I know of in
17 how they request ground transportation, other than
18 sometime last year -- I believe it was last year -
19 it was brought to our attention that our people
20 were acting as security for Senator Bruno Bruno.
21 That was brought to our attention by the Pataki
22 administration and they wanted that practice
23 stopped.

24 Q. Who brought that to your attention?

1 A. I believe it was Bill Howard. And I believe
2 -- I'm not sure if he told me or if he told the
3 Superintendent. But I remember discussing it with
4 the Superintendent and calling down to Major Smith
5 who was Troop Commander at the time, saying: No
6 more. We are not providing security; we are
7 providing transportation.

8 Q. Now, when you say "providing security for
9 Senator Bruno" what do you mean by that?

10 A. Our people were actually accompanying him
11 into events and that was not the way this thing
12 was set up. It was set up to provide him with
13 transportation. But our investigators are
14 professional, eager people, so they probably went
15 the extra step not knowing that that wasn't
16 approved by the Pataki administration.

17 Q. When you say they were accompanying him into
18 events, what is the purpose of their accompanying
19 him at that point?

20 A. I think their thinking was that they are
21 providing him with security. And, you know, the
22 Pataki administration's belief was he doesn't
23 warrant the additional security.

24 Q. And what are they trying to keep him secure

1 from?

2 A. I don't know if they are trying to keep him
3 secure from something or they are just doing what
4 troopers normally are doing with any person marked
5 as a dignitary of VIP.

6 Q. What are the considerations in escorting
7 someone who is a VIP or dignitary?

8 A. I think number one would be that some harm
9 could come to him. And number two is that they
10 get to where they are going on time and in the
11 right place. What we tend to do with a VIP is
12 advance the location they are going. Say, if we
13 were bringing someone to this building or meeting
14 here, we would the day before or earlier that day
15 come here to this office and say: We are bringing
16 Glenn Valle here today to meet with Mr.
17 Teitelbaum. Where is the meeting going to take
18 place? And, then, we would know, get on the
19 elevator, come to the eleventh floor, bring him
20 into this office or whatever office you are going
21 to meet with him in. It's a twofold thing. One
22 is to make sure there is no lost time in moving
23 the person and, two, to make sure we know exactly
24 where we are going and, if we have to leave with

1 him, exactly how we are going to get out.

2 Q. And you indicated that at a certain point in
3 time you received direction from Bill Howard that
4 you should not be providing security for Senator
5 Bruno?

6 A. Yes.

7 Q. And, what did you do?

8 A. I called down to Major Smith who was Troop
9 Commander at Troop NYC and, basically, told him
10 that it's drivers only; it's not security. And I
11 believe I also told him it's one vehicle, not
12 multiple vehicles.

13 Q. What was the difference in one vehicle
14 versus multiple vehicles?

15 A. Up until then, depending on how many people
16 were traveling with the senator, we would send
17 multiple vehicles so it wouldn't be three or four
18 people piled in the back. So, we may send two
19 troopers, each one in a separate vehicle, and two
20 people would go in the first vehicle and two
21 people would go in the second vehicle.

22 Q. Is that a distinction in security?

23 A. No. That's just a comfort thing. People
24 don't like sitting three adults in the back seat.

1 MS. TOOHER: My kids don't like sitting
2 three in the back seat.

3 Q. Was that a direction from Mr. Howard as
4 well --

5 A. Yes.

6 Q. -- that you should reduce the number of
7 vehicles?

8 A. Yes.

9 Q. What was that based upon?

10 A. That was a decision by him. I don't know
11 what he based that on.

12 Q. Was that ever committed to a writing?

13 A. Not that I know of.

14 Q. Then you mentioned the itineraries that you
15 received as part of the ground travel during the
16 Pataki administration. And at this point I want
17 to limit the inquiry to during that
18 administration.

19 A. Okay.

20 Q. If you had received a FOIL request for those
21 documents what would you have done?

22 A. If I would have received a FOIL request for
23 those documents I would have consulted with
24 counsel and made a determination on how best to

1 handle that FOIL request.

2 Q. So, prior to releasing documents like that,
3 you would have consulted with your counsel?

4 A. I would have, yes.

5 Q. And has there been any change as far as that
6 procedure since 2007? If you received a FOIL
7 request now for the ground itineraries what would
8 you do?

9 A. I would still consult with our counsel.

10 Q. That would be prior to releasing those
11 documents you would consult with counsel?

12 A. Yes.

13 Q. And why would you do that?

14 A. One reason is because it would be, you know,
15 a sensitive FOIL request and we would want to make
16 sure we are all on the same page and that we are
17 not sending, you know, mixed signals to media
18 agencies that we're going to release some things
19 and not other things.

20 Q. So, you would still consider the ground
21 itineraries for Senator Bruno a sensitive request
22 under FOIL from the State Police?

23 A. Yes. I would consider it a sensitive
24 request. I mean I think we would have to release

1 them, but I would want to make sure that, you
2 know, that I am on sound footing to do that.

3 Q. So, you would want to have your counsel
4 review the documents to determine if there was
5 anything in there subject to privacy issues or
6 security issues before you would release them?

7 A. Again, I wouldn't release them because I
8 don't handle FOIL, so it would be counsel. And
9 depending on what type of FOIL request it was,
10 whether it came from the PIO or the Records Access
11 Officer, they would make a determination.

12 Q. So, that kind of request would either go to
13 the PIO or the FOIL officer?

14 A. Generally, it would come to -- depending on
15 who is making the request. Media outlets
16 generally call our PIO when they want something.
17 Everyday citizens generally call the Records
18 Access Officer when they are looking for
19 something.

20 Q. But this type of request for ground
21 itineraries for Senator Bruno would be considered
22 a sensitive request, so that would probably be
23 brought to your attention?

24 A. It would either be brought to my attention

1 or, if there was a serving First Deputy, the First
2 Deputy's attention.

3 BY MS. SULLIVAN:

4 Q. Did it cause you concern, then, back in
5 March when you got the communication from Fred
6 Dicker and Paul Larabee that they were going to
7 circumvent FOIL to the executive chamber? Did it
8 give you pause in March that the FOIL protocol
9 wouldn't be followed?

10 A. I don't know if I would say "gave me pause."
11 I would have preferred that they didn't circumvent
12 our policy, but we work for the executive chamber
13 so they generally have the final say on an issue
14 like this. But I have seen numerous of the
15 senators' itineraries. I don't think there is
16 anything in there that can't be released to the
17 public. I mean it's using state resources. I
18 think that is information that the public is
19 entitled to know.

20 Q. Would you have preferred to have gone
21 through Counsel's Office before releasing that
22 kind of information?

23 A. I would have preferred they go through us,
24 you know. Let us handle it. It's true, I would

1 prefer that we do it.

2 BY MR. TEITELBAUM:

3 Q. Superintendent, in your experience
4 throughout your 25 years with the State Police, do
5 you know of an instance prior to the Larabee
6 episode that you have just described in which the
7 executive chamber circumvented the protocol of the
8 State Police as you have just described?

9 A. That's a tough question to answer because I
10 have really been in the job as First Deputy or
11 Acting Superintendent for four years. I'm
12 probably somewhat accurate when I say that from
13 time to time the executive chamber does come to an
14 agency like ours and say: We need you to do this.
15 But I can't say I know of any other specific, you
16 know, very specific indication of that. The
17 Pataki Administration really was, you know --
18 didn't bother us a lot. You know, they didn't --
19 it's just not something that they did.

20 Q. The reason I ask this is because I know that
21 -- and you correct me if I am wrong. I think you
22 have given testimony in the past in which you said
23 that if the FOIL request in the Larabee situation
24 remained with the State Police you would have

1 required it to be in writing?

2 A. Right.

3 Q. And, you would not have released documents
4 absent the writing?

5 A. If it came to us, yes.

6 Q. And, so, am I correct that when the
7 documents were requested by Larabee to be given to
8 Dicker without a writing, to an extent your
9 position was that since you were not -- you being
10 the State Police, obviously -- since you are not
11 releasing the documents that the protocol of the
12 State Police remained intact and it was not
13 violated?

14 A. Yes. We didn't violate our protocol, you
15 know. By them requesting the documents and us
16 giving them the documents, the decision was on
17 them, then, how to handle those documents.

18 Q. Is it fair to say that once the documents
19 went from the State Police to Larabee in that
20 episode in March, in a sense it was Larabee and
21 the executive chamber -- to use a legal term --
22 they assumed the risk in a sense?

23 A. Yes. And let me say this. I think it was
24 Paul Larabee if my memory serves me correctly. I

1 don't want to say 100 percent it was Paul Larabee,
2 but it was someone from their press office.

3 Q. I think the record establishes, I believe,
4 that it was Larabee.

5 MS. TOOHER: Yes.

6 MR. TEITELBAUM: Thank you.

7 BY MS. TOOHER:

8 Q. Did you have conversations after you were
9 named as Acting with Bill Howard concerning
10 executive flight and ground transportation?

11 A. The only conversation that I had, the first
12 conversations I had was I think in March. It
13 really wasn't a conversation. I think he sent me
14 an e-mail saying: Bruno is taking a flight. What
15 time is he leaving? My recollection is I called
16 over to aviation and got the information and sent
17 him a quick e-mail back.

18 Q. And what did you tell him?

19 A. I believe the start time that he was leaving
20 and the time he was due to come back.

21 Q. What was your understanding of what Bill
22 Howard was looking for at that time?

23 A. I can't tell you what he was looking for at
24 that time, other than he was looking for what time

1 Bruno's flight was on that day.

2 Q. And did that request come out of the blue?
3 Was it a follow-up to anything? Did you have any
4 prior experience with him?

5 A. No prior experience with him on that matter.
6 He has over my time as First deputy, as I recall,
7 requested similar information for either Senator
8 Bruno or the Governor; what time they are leaving,
9 what time is their flight. But I don't even
10 remember discussing this personally with him other
11 than in the e-mail.

12 (Commission Exhibit 27 was marked for
13 identification.)

14 Q. I am going to show you what has been marked
15 as Commission Exhibit 27 and ask you if this is
16 the e-mail you are referring to.

17 A. Yes.

18 Q. So, would it be fair to say that it was not
19 unusual for Mr. Howard to reach out to you
20 concerning issues about the helicopter?

21 A. No, absolutely not. It wouldn't be unusual.

22 Q. So, he was in fairly regular contact with
23 you about the flights?

24 A. I don't want to say -- I hesitate to use the

1 term "fairly regular." But, from time to time he
2 did call and ask about flights.

3 Q. Do you know how he was aware that Mr. Bruno
4 was flying on the plane the next day?

5 A. I don't know how. But, again, assumption.
6 The flight had to be approved by the executive
7 chamber for him to even be going on the flight.

8 Q. For Bruno to be going on the flight?

9 A. Yes.

10 Q. And, so, Mr. Howard would be privy to that
11 information in the executive chamber?

12 A. That, I can't say. But I would make that
13 assumption.

14 Q. Do you know where Mr. Howard was located in
15 the executive chamber?

16 A. On the second floor.

17 Q. Was he in proximity so the individual who
18 approved the flights?

19 A. I believe his office was on the opposite
20 side of the building. It's still part of the
21 chamber, the State Operations part of the chamber.
22 So I don't know where the Chief of Staff's office
23 is. That's the person who approves the flight. I
24 don't know where her office is.

1 Q. That would be Marlene Turner?

2 A. Yes.

3 Q. And, did you have any subsequent
4 conversations after this e-mail about this flight?

5 A. Not to the best of my knowledge.

6 Q. Do you know if ground transportation was
7 provided as part of this flight?

8 A. I don't know. I am assuming probably yes,
9 because generally when the senator goes to the
10 city it is us providing him with ground
11 transportation. But it's not something that I set
12 up, so I can't say if it happened or not.

13 Q. Do you still receive itineraries from
14 Senator Bruno's office concerning ground
15 transportation for these flights?

16 A. As of --

17 Q. Since the Spitzer administration has come
18 in.

19 A. We received them up until early July. We
20 have not received any ground transportation
21 requests. I don't think we received any flight
22 requests since July.

23 Q. Do you recall if you received an itinerary
24 with this flight request?

1 A. That, I don't know. But, again, I would not
2 have received that itinerary. That would have
3 went to Colonel Harney.

4 Q. And who is Colonel Harney?

5 A. He is the Deputy Superintendent in the
6 Superintendent's office. Basically, he is
7 temporarily doing 75 percent of my old job that
8 the First Deputy would do.

9 Q. So, Colonel Harney is now the individual who
10 receives the ground transportation request
11 information from Senator Bruno's office?

12 A. Yes.

13 Q. Are you involved in that process at all?

14 A. Not anymore, no.

15 Q. When you say "not anymore," as of when?

16 A. As of February 26th.

17 Q. So, as of February 26, 2007, you were no
18 longer involved in the ground transportation
19 approval for Senator Bruno?

20 A. That's correct. The only exception to that
21 would be if Colonel Harney isn't available. Then,
22 they would probably come to me. But I don't
23 recall any instances of that.

24 Q. And do you recall having subsequent

1 conversations with Bill Howard concerning Senator
2 Bruno's flights?

3 A. Yes.

4 Q. Can you tell me when the next one was?

5 A. I believe the next conversation I had was
6 mid May, mid to late May.

7 Q. What was the nature of that conversation?

8 A. My recollection is that he called and
9 indicated to me that they were working on a FOIL
10 request for records for Bruno and Governor
11 Spitzer.

12 Q. Do you know what the nature of that FOIL
13 request was?

14 A. That, I don't know. All he said is he's
15 working on a FOIL request. And at that time he
16 wanted the aircraft records for both of those
17 subjects.

18 Q. And this is mid May, I think you indicated?

19 A. Mid May.

20 Q. And was this your first contact on this FOIL
21 request for the documents for Senator Bruno and
22 the Governor?

23 A. To the best of my knowledge, yes.

24 Q. If I told you that Bill Howard testified

1 that when he made contact with you, you were
2 already aware of the FOIL request and already
3 gathering documents, would that be accurate?

4 A. No . That wouldn't be accurate.

5 Q. So, prior to Bill Howard contacting you, you
6 had not been contacted by anyone concerning this
7 FOIL request?

8 A. No.

9 Q. And, how did he contact you at that time?

10 A. I believe by telephone.

11 Q. Exactly what documents was he looking for?

12 A. He was initially, if my memory serves me
13 correctly, he was looking for -- it was either one
14 month of flight information or three months.
15 There was subsequent contact that he had.

16 Q. When you say "flight information" --

17 A. Basically, flight information for the
18 Governor and Senator Bruno, and that would entail
19 the flight approval sheet that is given by the
20 executive chamber, a copy of our manifest, and any
21 other aviation documents.

22 Q. And, did he specifically request those
23 documents or just flight information?

24 A. I think flight information. And generally

1 those are, you know, a package for us.

2 (Commission Exhibit 28 was marked for
3 identification.)

4 Q. I am going to give you what has been marked
5 as Commission Exhibit 28. It's nine pages. The
6 top page is a facsimile transmission cover sheet
7 to Nancy from Suzanne, flight confirmation
8 5/16/07, and ask you if you can identify these
9 documents.

10 A. I can identify part of these documents. I
11 don't ever recall seeing a top document, "Nancy to
12 Suzanne," but it looks just like a facsimile cover
13 sheet, so -- these other documents are all the
14 other types of documents that we would keep on
15 executive-generated flights. These are all the
16 documents from the -- this is the document from
17 the executive chamber.

18 Q. This is an -- I'm going to mark it as A
19 through I and leave the clip on.

20 A. Exhibit 28 part A, I don't ever recall
21 seeing. It's just a fax copy. It looks like they
22 faxed it to our aviation unit.

23 B is a flight request information form
24 for the flight for Senator Bruno, type of travel:

1 Helicopter. When leaving, when coming back. And
2 the bottom here is Senator Bruno's signature
3 certifying that it is true and accurate. And,
4 then, this M.T. I recognize as Marlene Turner's
5 approval for the flight.

6 Q. And she is the Chief of Staff in the
7 executive chamber?

8 A. Yes. She's the one that approves executive
9 flights, state executive flights.

10 This is a document -- C is a document
11 generated by by our aviation unit which is
12 basically a flight manifest as to how long our
13 aircraft was used.

14 The next document is (28-D) basically
15 the aviation unit confirming -- it's a
16 confirmation that the flight is going to take
17 place.

18 E is another manifest. I believe this
19 one is for May 17th. So it's probably a trip, one
20 part of a trip.

21 F is another flight manifest. This is
22 indicating an hour flight coming back with no
23 passengers. And another part of the approval
24 flight request information showing that Marlene

1 Turner has approved the flight and the New York
2 State Police aviation unit is a confirmation so
3 people don't forget that they've got a flight with
4 us.

5 This form is a form our aviation people
6 use to keep track of different aircraft and stuff.

7 Q. Would this be fairly representative of the
8 type of flight information documents that you
9 would have provided in response to Mr. Howard's
10 request?

11 A. Pretty much.

12 Q. And, do you recall if his request came in
13 before or after the particular trip, any
14 particular trip by Senator Bruno?

15 A. I think his first request came in after a
16 number of trips for Senator Bruno.

17 Q. And, do you recall a May 17th trip by
18 Senator Bruno?

19 A. Yes.

20 Q. And, do you recall if Mr. Howard's request
21 came in before or after the May 17th trip?

22 A. I think it came in the day before. And that
23 trip was the one where I had e-mailed him and
24 asked if they wanted us to continue providing

1 transportation to the senator.

2 Q. I think you are getting a little confused,
3 and we will use some documents to refresh your
4 recollection on timing.

5 (Commission Exhibit 29 was marked for
6 identification.)

7 Q. I am going to show you a document that has
8 been marked Commission 29, a May 21, 2007 e-mail
9 to Anthony Williams from Preston Felton. "Can you
10 send me up the information on the trip that the
11 Majority Leader did last week, itinerary for the
12 trip ASAP." And, you were requesting this
13 itinerary for the trip last week. Do you recall
14 what trip that was?

15 A. That would have been the May 17th trip.

16 Q. Mr. Williams apparently in the thread of the
17 e-mail said, "I faxed it up." Did he provide an
18 itinerary to you for the May 17th trip?

19 A. Yes.

20 Q. And do you recall if that was in response to
21 a request from Mr. Howard?

22 A. Yes, it was.

23 Q. Did you provide that information to Mr.
24 Howard?

1 A. Yes.

2 Q. Is that the information that Mr. Howard was
3 requesting from you in his initial phone call?

4 A. No. That was a secondary phone call.

5 Q. So, prior to his request for the itinerary
6 for the May 17th trip somewhere on or about 5/21,
7 he had contacted you for different information?

8 A. As I said, he had sometime in mid May called
9 and asked for flight information for the Governor
10 and for Senator Bruno. We sent him that
11 information. Then, he called back and asked for
12 the itinerary for the May 17th trip. And that's
13 what this e-mail is about, me sending Anthony
14 Williams an e-mail saying: Can you fax me up the
15 itinerary.

16 Q. Do you recall when sending this e-mail if it
17 was proximate in time to Mr. Howard's request of
18 you for the itinerary?

19 A. I would say probably shortly after, if I had
20 to guess.

21 Q. When you say "shortly after" does that mean
22 a matter of days? Hours?

23 A. No. I would say minutes. I like to handle
24 stuff promptly. I don't like to leave stuff

1 sitting around.

2 Q. So, if you sent an e-mail -- this is at 2:23
3 p.m. on 5/21, it's fairly safe to assume you
4 received the request from Mr. Howard on May 21st?

5 A. Yes.

6 Q. It would be your practice to follow up on a
7 request like that within a relatively short period
8 of time?

9 A. It would be my practice. The only exception
10 to that is if I get distracted by something
11 extremely more pressing than what I was dealing
12 with.

13 Q. You don't recall anything in particular that
14 would have distracted you for more than a day?

15 A. No.

16 Q. The requests for -- I'm going to call them
17 the manifests, the documents we were talking about
18 earlier, that came in prior to this request; is
19 that correct?

20 A. Yes.

21 Q. What did you do with that request?

22 A. When I received his original request I
23 called over to aviation and asked to speak to the
24 Major. He wasn't around, so I spoke with the

1 chief pilot. It was a Captain, and I asked him to
2 send me the information that Mr. Howard had
3 requested.

4 Q. And, did he do that?

5 A. Yes.

6 Q. And what information did he send you at that
7 time; do you know?

8 A. The flight manifest, the trip ticket sheet
9 that we talked about. Basically, it would contain
10 that information in this packet that you have
11 here. And, again, I'm not sure if Mr. Howard's
12 first request was for one month or three months,
13 but I know he called back once he got the first
14 documentation and then asked for more
15 documentation.

16 Q. And he told you that this request was part
17 of a FOIL request?

18 A. What he said was they were working on a FOIL
19 request; that the executive chamber was working on
20 a FOIL request.

21 Q. And, that was what he needed the documents
22 for was to respond to a FOIL request?

23 A. Yes.

24 Q. And did you take any action further on that

1 request?

2 A. On what request?

3 Q. The request for the documents.

4 A. Just to gather the documents that he wanted
5 and send them to him.

6 Q. And, you sent those documents directly to
7 him?

8 A. I didn't send them. I believe the aviation
9 unit sent them to my secretary and then we sent
10 them down to Mr. Howard.

11 Q. You knew these documents were in response to
12 a FOIL request from the executive chamber; is that
13 correct?

14 A. Yes.

15 Q. Did you say anything to Mr. Howard about
16 directing that request to the State Police
17 directly?

18 A. No.

19 Q. Did he indicate to you that this was a media
20 request?

21 A. I don't know that he indicated that. But,
22 you know, the media FOILS, these types of
23 documents we get all the time. So, I don't want
24 to say he indicated that because it may have been

1 just an assumption on my part.

2 Q. So, if I told you that Howard testified
3 before the Attorney General that he told you Jim
4 Odato was looking for books, for information on
5 the flights, would that be accurate testimony?

6 A. I can't say that's accurate because I don't
7 --

8 Q. Do you have any recollection of Mr. Howard
9 telling you that Jim Odato was looking for these
10 documents on the aviation flights?

11 A. No.

12 Q. Could he have told you that Jim Odato was
13 looking for this information?

14 A. I think that would be something that I would
15 remember.

16 Q. Do you remember him telling you it was a
17 FOIL request?

18 A. Yes.

19 Q. Do you remember him telling you that it was
20 a FOIL request from the media?

21 A. Again, I don't specifically remember him
22 telling me that it was a FOIL request from the
23 media. I remember him telling me they were
24 working on a FOIL request. I may have went on the

1 assumption it was a FOIL request for the media
2 because that is the only people who FOIL these
3 types of documents.

4 Q. So, it's fairly common for, in your
5 experience, requests for these types of documents
6 come typically from the media?

7 A. Yes.

8 Q. And did you consult with anyone before you
9 provided the documents to Mr. Howard?

10 A. At some point I did check with Mr. Valle
11 again to make sure we were on the same page and
12 that we were not sending different messages to the
13 media or to anybody about our FOIL policy.

14 Q. What did you inquire of Mr. Valle?

15 A. If my memory serves me correctly, if this
16 would be, you know, the type of document that we
17 would release. His indication was yes, the public
18 has a right to know. So, it's something that we
19 eventually would give up.

20 Q. When you say: Would this be the type of
21 document that we would release, do you mean
22 pursuant to a FOIL request?

23 A. Yes, pursuant to -- you know, if we had that
24 request, yes.

1 Q. So, you went to Mr. Valle and said: If we
2 had a FOIL request for these documents would we
3 release them?

4 A. I didn't actually go to Mr. Valle. He came
5 to my office and I kind of ran it by him.

6 Q. Did you show him the documents at that time?

7 A. I believe I did.

8 Q. Did he look at the documents?

9 A. I'm assuming he did but I can't say for
10 sure. I remember us having a discussion about it,
11 but I can't say if he looked at them and read
12 them.

13 Q. Do you recall handing them to him or giving
14 them to him to examine?

15 A. I would assume, yes. I don't know if I gave
16 them to him or if he had them when he walked in.

17 Q. These documents are different from the
18 documents in the subsequent request on 5/21; is
19 that correct?

20 A. Which?

21 Q. The e-mail request in Commission Exhibit 29.

22 A. Yes -- no. This is not a document that I
23 showed to Mr. Valle that day, this e-mail.

24 Q. I understand that. That's what I am trying

1 to clarify. This is now May 21st, which you
2 indicated is after you provided these documents;
3 "these documents" being Commission 28, the typical
4 flight manifest information.

5 A. My recollection is that there were more of
6 these. (Indicating Exhibit 28)

7 Q. Was there a time frame that the request
8 covered?

9 A. The original request covered either one
10 month or three months, and the secondary request
11 covered one or three months. But they were
12 opposite one another. I don't know if the first
13 request was for a month and then they asked for
14 three months, or if the first request was for
15 three months and the second request was for a
16 month. My recollection is that it was one or the
17 other.

18 Q. But, all the documents requested were of
19 this nature, Commission Exhibit 28, the flight
20 aviation documents, kept by the State Police
21 Aviation Bureau?

22 A. It was kept by the State Police, basically,
23 for the executive chamber.

24 Q. Okay. And the request set forth in Exhibit

1 29 --

2 A. Is for the itinerary.

3 Q. And, where did you get that document from,
4 the itinerary?

5 A. From Anthony Williams.

6 Q. That was faxed to you by Mr. Williams?

7 A. Yes.

8 Q. And, that was the itinerary for the 17th?

9 A. I believe the 17th, yes.

10 Q. And you provided that to Mr. Howard?

11 A. Yes.

12 Q. Did you go back to Mr. Valle at any time on
13 that document?

14 A. Not that I recall.

15 Q. So, you didn't consult with him concerning
16 the propriety of providing the itinerary?

17 A. No.

18 Q. Do you recall where the itinerary came from?
19 Did it come from Anthony Williams?

20 A. The itinerary from May 17th, I believe, came
21 from Mr. Williams. Where he got it from, I do not
22 know.

23 Q. And, did you forward that directly to Mr.
24 Howard?

1 A. Yes.

2 Q. I am going to show you what has previously
3 been marked as Commission's Exhibit 5, and ask you
4 if you recall if this is the itinerary you sent to
5 Mr. Howard at that time.

6 A. I think so, yes.

7 Q. Had you seen this document prior to sending
8 it to Mr. Howard on that date; do you recall?

9 A. No.

10 Q. I am just going to ask if we can compare,
11 talk a little bit about the content of what is in
12 Commission Exhibit 5. Can you tell me what
13 information is set forth in there?

14 A. A trip to New York City, date and time of
15 the trip, who is traveling, Bruno, Novella,
16 Lovell, McArdle. The date they are leaving:
17 11:00, helicopter, tail number. Leaves Exit 23,
18 lands in New York City, who the driver is going to
19 be, going to a location C.V. Starr, contact number
20 for what appears to be someone at that location.
21 Then, they are going to Sheraton New York Hotel.
22 Then, Friday 9:00 a.m. helicopter leaves from West
23 30th. It notes Chris Thompson will replace Mike
24 Novella in the helicopter.

1 Q. This document, Commission 5, provides a fair
2 amount of information concerning Mr. Bruno's
3 activities; is that correct?

4 A. It does provide some information of the
5 Senator's activities, yes.

6 Q. It indicates who will be traveling with him.
7 It indicates the various locations and the times
8 that he will be at those locations; is that
9 correct?

10 A. Yes.

11 Q. It also indicates the driver who will be
12 providing services to him; is that correct?

13 A. Yes.

14 Q. And it indicates where he is staying as well
15 as the time that he is returning back; is that
16 correct?

17 A. Yes. It says three p.m. overnight. I am
18 assuming that is where he is staying.

19 Q. And Commission Exhibit 28 provides much more
20 limited information. It provides departure time
21 and arrival time back home, but it doesn't give
22 you any information concerning Senator Bruno's
23 activities while he is in New York City; is that
24 correct?

1 A. That's correct.

2 Q. So, the information is much more specific as
3 contained in Commission Exhibit 5 as to Senator
4 Bruno's whereabouts than the information contained
5 in Commission Exhibit 28?

6 A. I wouldn't say that. I think if you look at
7 this information, this is the first part of the
8 trip which is the flight information. And this is
9 very specific as to the flight, and this is very
10 specific as to the ground. But it's all from the
11 one trip.

12 Q. I understand that it's all from the one
13 trip. For comparison purposes I tried to make it
14 as straightforward as possible. But this
15 information doesn't give an hour by hour account
16 of his locations when he is in the City; is that
17 correct?

18 A. No, this doesn't. But, this is the flight
19 part of the trip and this is the ground part of
20 the trip.

21 Q. This is a distinctly different document.

22 A. Yes.

23 Q. Commission's Exhibit 5 is a distinctly
24 different document than Commission 28?

1 A. The documents are for two separate purposes
2 for this trip.

3 Q. And, you didn't consult with Mr. Valle
4 concerning providing Commission Exhibit 5 to Mr.
5 Howard; is that correct?

6 A. No.

7 Q. But, I believe you did testify earlier that
8 if the State Police received a FOIL request for
9 Commission Exhibit 5 you would consult with Mr.
10 Valle; is that correct?

11 A. I believe I said if the State Police
12 receives a FOIL request for these documents that I
13 would consult with Mr. Valle for these types of
14 documents.

15 Q. When you say "these types of documents" --

16 A. The travel itineraries.

17 Q. For the flight manifests?

18 A. Yes.

19 Q. But you wouldn't consult with Mr. Valle for
20 Commission Exhibit 5?

21 A. I may have; I may not. It depends on what
22 is being requested. In this case the ground
23 travel is really a continuation of his air travel.
24 Is the trip approved by the executive chamber?

1 Did they approve him taking the flight? They know
2 he is going to have State Police transportation on
3 the ground. It's really one continuous process.

4 Q. But these records are provided to the State
5 Police directly; is that correct?

6 A. This record here is provided directly.
7 (Indicating Exhibit 5) This is not our record.
8 (Ex. 5)

9 Q. This was provided to you by Bruno's office?

10 A. Yes.

11 Q. So, Commission Exhibit 5 is not part of the
12 package of documents that is provided to the
13 executive chamber for flight approval; is that
14 correct?

15 A. That, I can't say, because I don't know what
16 the chamber keeps and what they send to us. So, I
17 don't know if they get this and then send us this
18 or hold onto this.

19 Q. You don't know if they get Commission's
20 Exhibit 5 as part of what they send to you in the
21 package as part of Commission 28?

22 A. Yes. That, I don't know.

23 Q. But, Mr. Howard was requesting from you the
24 information concerning Senator Bruno's itinerary

1 contained in Commission's Exhibit 5?

2 A. Yes.

3 Q. And you sent that to him?

4 A. Yes.

5 Q. Had he ever requested itinerary information
6 concerning Senator Bruno in the past?

7 A. Not that I recall. But, again, in over
8 three years possibly, but not that I recall.

9 Q. Do you recall ever providing Senator Bruno's
10 itinerary information to the executive chamber as
11 part of an air request in the past?

12 A. No. But it's not something that we would
13 provide to them.

14 Q. So, it was fairly unusual for him to request
15 that from you as part of his normal air request?

16 A. I wouldn't say it's unusual if he has a FOIL
17 request. Then, I don't think it would be unusual.

18 Q. Has he talked to you about FOIL requests in
19 the past for flight documents?

20 A. He hasn't talked to me, no.

21 Q. Have you provided documents to him in the
22 past as part of a FOIL request to the executive
23 chamber?

24 A. I don't know.

1 Q. Do you recall providing documents to him in
2 the past?

3 A. I don't recall. I know I have provided him
4 with different documentation on a number of
5 issues.

6 Q. When you say "documentation" could you
7 explain that?

8 A. Reports, memoranda.

9 Q. Of the State Police?

10 A. Of the State Police. He is the operations
11 person that deals with us. I can tell you that he
12 has requested to review different confidential
13 reports of the State Police. We have allowed him
14 to do that. He has requested different memoranda
15 concerning different projects that we are going on
16 and we have provided him with that.

17 Q. But you are talking then about documents
18 being provided in the ordinary course of business
19 to Mr. Howard. You are not talking about
20 documents being provided to Mr. Howard to release
21 as part of a FOIL request?

22 A. I would say yes, that's the case.

23 Q. You have not provided documents to Mr.
24 Howard in the past to release as part of a FOIL

1 request?

2 A. I would agree with that, yes.

3 BY MS. SULLIVAN:

4 Q. Can I just ask about Commission's 5, the May
5 17th itinerary that the State Police received from
6 Joe Bruno's office. On Senator Bruno's trips, is
7 that the information you typically provided?

8 A. Either something like this or similar.

9 Q. Is it in that format?

10 A. That format, yes.

11 Q. Or is it sometimes provided by e-mail?

12 A. Sometimes, if it's a last-minute trip it
13 can be provided by e-mail. And, then, for awhile
14 they would instead -- when I was a First Deputy,
15 instead of faxing it over they may e-mail it over
16 or they may e-mail it to the guys in New York
17 City.

18 Q. Are there occasions where you would request
19 that itinerary from Senator Bruno's office?

20 A. If -- I believe the young lady in his office
21 who handles setting up his travel, her name is
22 Leslie. If she called and said the senator is
23 going to New York City, I would say, "Can you send
24 me an itinerary?" And, that allows me to send it

1 to our people in New York City so they have
2 something to work off of.

3 Q. It is not something the State Police
4 requires from Bruno's office?

5 A. No. I mean if he said: I am not going to
6 give you an itinerary; I'll tell you when we get
7 there, we would work around it.

8 BY MS. TOOHER:

9 Q. When you look at Commission's Exhibit 5, it
10 has on it the driver as well as the tail number on
11 the plane. How would Bruno's office get that
12 information?

13 A. I am assuming from aviation, and the driver
14 would come from New York City.

15 Q. And, this information, how far in advance of
16 the actual flight would that be available?

17 A. That's tough to say. Sometimes it would be
18 four or five days. Sometimes it would be, you
19 know, the day of. It goes back and forth, you
20 know. Sometimes they would call and say -- Leslie
21 would call and say: The senator is going to New
22 York City on Friday. Can we get somebody? I
23 would say: Yes, send me the itinerary. And I
24 would call down to the City and say Senator Bruno

1 is coming down. Assign somebody to him.
2 Sometimes, they would give me a name and the
3 person's cell phone number, or I would have --
4 when I talked to New York City I would say, "Call
5 Leslie. Here's her number. Set it up. And they
6 would call her and set it up and then she would
7 fax it to us. And, I would either fax it down or
8 sometimes she would fax it down to the people in
9 the City.

10 Q. So, there would be two itineraries from the
11 senator's office?

12 A. No. There would be one itinerary from the
13 senator's office. But sometimes they would call
14 and say he is going down -- it can be planning a
15 flight, planning a trip. He's going down. Can we
16 get ground transportation? Yes. I call down and
17 say: The senator is coming down. Assign somebody
18 to him, and they would assign a person.
19 Generally, that person or one of the bosses in New
20 York City calls the senator's office and they
21 would work out the details. And, then, she would
22 send the information out. Like this one, I'm
23 assuming she already talked to New York City
24 because she has New York City and she's got his

1 name here and she has his telephone number.

2 Obviously, to get that, she has already had to
3 talk to the people in New York City.

4 Q. So, you receive two itineraries from Senator
5 Bruno's office --

6 A. We --

7 Q. -- and let me finish. You indicated they
8 send you an itinerary when you first call down for
9 an officer.

10 A. No. She will call and tell us that they are
11 planning a trip. The senator is going to New York
12 City and can we set up ground transportation? Yes.
13 Send me an itinerary, okay. So, I call down and
14 arrange the travel. Our people usually will call
15 her. Whoever the guy is assigned will call her.
16 That's how she gets the name here. So, the
17 senator knows this is who is picking him up.

18 Q. I am just trying to clarify for my own
19 edification.

20 A. When I say "send the itinerary" she doesn't
21 send it until it's finalized.

22 Q. So, you don't get something like Commission
23 Exhibit 5 until --

24 A. Immediately.

1 Q. Immediately?

2 A. Yes.

3 Q. In the initial request would they identify
4 to you or to whomever is handling it in your
5 office where the senator is going?

6 A. No, not usually.

7 Q. They would just tell you: We want a driver,
8 or we need ground transportation in coordination
9 with a flight to New York City?

10 A. Yes. Now, sometimes they would send the
11 actual itinerary for our people to sign over, and
12 then I call and say: I got your itinerary. I'm
13 going to call down to the City and assign someone.
14 Then, I call and say: The senator is coming down.
15 I'm faxing his itinerary.

16 Q. So, you would not always get the same type
17 of documentation from Senator Bruno's office; is
18 that fair to say?

19 A. Most of the time it would be documentation
20 very similar to this. (Indicating Exhibit 5) But
21 if it's a last-minute thing they would either
22 e-mail or call. And, then, we would -- I hate to
23 use the words, but hook him up with the
24 investigator from New York City that would be

1 handling that trip.

2 Q. Do you provide this information to the
3 executive chamber?

4 A. This information?

5 Q. The information concerning Senator Bruno's
6 ground travel, is that provided to the executive
7 chamber in advance of the flight?

8 A. No. This part of it, no.

9 Q. I am going to show you a document that has
10 been previously marked as Commission 'sExhibit 16.
11 It's an e-mail dated May 17th. At the top: From
12 William Howard to Darren Dopp. It appears to
13 contain the same information contained in
14 Commission Exhibit 5 concerning senator Bruno's
15 approval, 12:30 in C.V. Starr; 3:30 in Sheraton,
16 9:00 a.m. scheduled return flight. And the date
17 trhat Mr. Howard is providing this to Mr. Dopp is
18 5/17.

19 A. Um-hmm.

20 Q. Do you have any idea how Mr. Howard got that
21 information on that date, none whatsoever.

22 Q. When Mr. Howard made the request to you on
23 the 21st, is he seeking the same information, the
24 same flight information, or was there another

1 itinerary for the prior week?

2 A. No. I think this -- the 17th is the one
3 that I think he is requesting for the prior week.

4 Q. Do you have any idea why Mr. Howard would be
5 looking for in the itinerary, if he already had
6 the information concerning Mr. Bruno?

7 A. I don't know.

8 Q. Did you provide the information to Mr.
9 Howard in advance of providing him with Commission
10 Exhibit 5?

11 A. Not to the best of my knowledge.

12 Q. Do you know if anyone in your office
13 provided the information to Mr. Howard in advance
14 of you providing him with Commission's Exhibit 5?

15 A. I can't say that. But I know I'm pretty
16 sure I didn't give him the information.

17 Q. It appears from Commission's Exhibit 16 that
18 he had the information in advance of you providing
19 him the itinerary.

20 A. Yes.

21 BY MR. TEITELBAUM:

22 Q. Superintendent, do you know whether anybody
23 other than yourself at the State Police was in
24 communication with Mr. Howard concerning this

1 matter?

2 A. Nobody that I know of. But, again, at this
3 point the information contained in this --

4 Q. "This" being Exhibit 5?

5 A. Yes -- on the 17th, would not be something
6 that would have come to me. So, I'm assuming this
7 went to the First Deputy's office or the one
8 performing these duties. But I don't remember
9 providing him with that information.

10 Q. As a matter of course, were you the person
11 at the State Police who was BillHoward's contact?

12 A. I was one of his contacts, me or Bart
13 Johnson, our Field Commander on Homeland Security
14 issues. Maybe Frank Christensen on an employee
15 relations issue. But, generally, it would be me
16 and, in my absence, Colonel Harney and in his
17 absence Bart Johnson, depending on the issues he
18 was dealing with.

19 Q. On the issue that we are now discussing,
20 would any of these other gentlemen be involved
21 with the information concerning the flights, to
22 your knowledge, concerning these facts?

23 A. Possibly Colonel Harney, but I don't think
24 -- this doesn't go through field command, so I

1 can't say.

2 Q. The information that went to Howard wasn't
3 from Colonel Harney in your judgment?

4 A. I can't answer that because I don't know
5 what, you know, what Colonel Harney has told him.

6 Q. If he had to communicate with the executive
7 chamber would he share that fact with you
8 normally?

9 A. It depends on what on what the issue was.

10 Q. On the issue of Senator Bruno's flight
11 schedules and itineraries.

12 A. He might; he might not. I'm assuming that he
13 probably would, but I can't say 100 percent that
14 he would.

15 Q. Do you know of any other situation in which
16 Colonel Harney was involved in providing
17 information concerning Senator Bruno's air and
18 ground transportation?

19 A. I know of no occasion where he provided that
20 information. What I'm saying here is I don't know
21 who provided this information. It could have been
22 provided on a number of levels. It could have
23 been provided by personnel in the City. I don't
24 know. I just don't know. I don't have any

1 knowledge that Jim Harney was provided with this
2 information. I don't want to be unfair to Harney.

3 Q. I understand. In the normal course would
4 Bill Howard, to use for lack of a better
5 expression, leapfrog over you and talk to your
6 staff?

7 A. There have been occasions when that has
8 happened. Again, the Assistant Deputy Secretary
9 to the Governor is a very powerful man in the eyes
10 of the State Police. I probably would prefer he
11 go through me, but that doesn't always happen.
12 Now, up until about a month ago I had an ongoing
13 thing with the Deputy Secretary of the Governor,
14 one of my troop commanders.

15 Q. Bart Gibson?

16 A. Yes. I now recognize that is something that
17 is his right to do, and I think it has been a
18 benefit for him to do that because he is learning
19 how professional our agency is.

20 Q. Up until this point of the 17th, to the best
21 of your knowledge, were you the only contact point
22 in this matter for Mr. Howard? And I am just
23 asking what you know.

24 A. To the best of my knowledge, since I don't

1 recall setting this trip up and did not send it to
2 the City I cannot say. And I have to assume I am
3 not the only point of contact..

4 BY MS. TOOHER:

5 Q. Were you aware of any activity or objection
6 in the chamber to Senator Bruno using the ground
7 transportation on the May 17th trip in advance of
8 the July 1st article?

9 A. Was I aware of any --

10 Q. Objection by the chamber.

11 A. Objection; I can't say for the Spitzer
12 administration, but -- -

13 Q. Specifically, the May 17th trip I am talking
14 about.

15 A. The May 17 trip?

16 Q. Yes.

17 A. None that I know of. Just for that trip?

18 Q. Yes.

19 A. None that I know of.

20 Q. Prior to the request on May 21st, had you
21 discussed the May 17th trip with Mr. Howard?

22 A. To the best of my knowledge, no. That was
23 the first time that I can remember when he called
24 and asked for what the itinerary was on the 21st.

1 Commission Exhibit 30 was marked for
2 identification.)

3 Q. I am going to show you what has been marked
4 as Commission Exhibit 30: It's a one-page
5 document for release dated May 17, 2007, a
6 statement by Darren Dopp.

7 A. Okay.

8 Q. I'm going to ask you if in advance of the
9 May 21st request you had seen this document.

10 A. No.

11 Q. And, would you agree that this document
12 connotes a negative light to Mr. Bruno's May 17th
13 trip?

14 A. (Pause) To me, I think you could draw a
15 somewhat negative inference but, again, it's not a
16 document I have seen before --

17 Q. I understand that.

18 A. -- or that I had any input to, so I can't --

19 Q. Do you know who Darren Dopp is?

20 A. He was the Communications Director.

21 Q. If you were aware of Commission's Exhibit
22 30, this document right here, would that have had
23 any impact upon your response to Mr. Howard's
24 request for the May 17th itinerary if you were

1 aware that they were putting together a statement
2 for the media release?

3 A. That, I can't answer because I didn't see
4 this. So, I can't --

5 Q. But, you have the document in front of you
6 now. And if you were aware that the chamber was
7 preparing a media release?

8 A. Can I ask did this actually go out?

9 Q. At this point we are still exploring that.

10 A. I can't comment on a document that I didn't
11 make, or whatever.

12 Q. I'm not asking you to comment on the
13 document. I am asking you to comment on your
14 actions in responding to the request for Bruno's
15 itinerary. Would this have had any impact upon
16 your response to that request?

17 A. I would have to say probably not, because
18 the documentation that I provided to Mr. Howard he
19 is entitled to have.

20 Q. Why do you say he was entitled to have it?
21 He told you he was responding to a FOIL request.

22 A. This whole executive travel thing is an
23 executive committee function that they have
24 dropped the duties of the air and ground on us. We

1 don't approve these. We don't disapprove them.
2 This is an executive chamber function. This is
3 not something that we do absent their permission.
4 We don't provide travel for elected officials
5 outside of the instructions of the executive
6 chamber. This is not a normal police function.

7 Q. Do you seek executive chamber approval -- or
8 did you seek executive chamber approval before
9 allowing for ground transportation for Senator
10 Bruno?

11 A. It had been approved. In the Pataki
12 administration I wasn't sure. It was still --
13 that the Spitzer administration was fully on board
14 with it, and I'm sure you will see in one of my
15 e-mails me questioning whether we should continue
16 providing that because, quite frankly, I thought
17 it was something I should seek guidance on.

18 Q. Why did you think that?

19 A. Because it was not something that we
20 provided for anybody else. And, two, it was again
21 the type of thing that Pataki had approved. But
22 in light of everything that went on recently with
23 travel and vehicles and drivers for people, the
24 Hevesi matter, I wanted to make sure I was on full

1 ground in providing my transportation. And as a
2 state agency I have to ensure our resources are
3 used appropriately. And I think it's reasonable
4 for me to ask that question.

5 Q. Did you get guidance, response to that
6 question?

7 A. They sent us -- they did send us what he is
8 doing, which I did.

9 BY MS. SULLIVAN:

10 Q. You mean the itinerary?

11 A. The itinerary, and you will see itinerary in
12 an e-mail.

13 BY MS. TOOHER:

14 Q. But you are talking now May 17th and 24th?

15 A. I'm talking the 23rd, 24th.

16 Q. You had been providing ground travel for
17 Senator Bruno throughout 2007; is that correct?

18 A. Yes.

19 Q. And you hadn't sought guidance before that
20 time; is that correct?

21 A. That's correct. However, the FOIL request
22 kind of made me say listen, maybe we should ask
23 about this. The one thing you will find with FOIL
24 requests and stuff like this is no elected

1 official wants his name in the newspaper. Take,
2 for instance, since July 2nd, or whatever,
3 whenever this article came out. Other than the
4 Governor and Lieutenant Governor who normally fly
5 on our aircraft, nobody has flown. The reason is
6 when your name appears in the newspaper it makes
7 them nervous. So, I wanted to be on firm footing.

8 Q. When you say you want to be on firm footing,
9 what are you referring to?

10 A. Continuing to provide -- to make sure that
11 the Spitzer administration wanted to provide
12 ground transportation for Senator Bruno.

13 Q. And did you ever mention to Senator Bruno
14 that there were questions concerning whether or
15 not you should still be providing ground
16 transportation?

17 A. No.

18 Q. Did you ever mention to Senator Bruno, hey,
19 Senator Bruno, we're getting FOIL requests and
20 there have been a lot of inquiries on the planes.
21 I respect you. I would rather just give you a
22 heads-up that people are looking at this.

23 A. I think, clearly, that would be
24 inappropriate.

1 Q. Did you mention anything to Senator Bruno
2 about a heightened level of review on the ground
3 transportation?

4 A. Again, that would be inappropriate for me to
5 release to the senator that records are being
6 FOILed.

7 Q. But you had not received a FOIL request?

8 A. No. The chamber had received one, so it
9 would be inappropriate for me to run and say:
10 Hey, the chamber has a FOIL request.

11 Q. But you knew that there was this heightened
12 scrutiny of the ground transportation?

13 A. I knew they were FOILING records.

14 Q. That they were FOILING the records of the
15 State Police?

16 A. No. They were FOILING the travel records
17 for the senator.

18 Q. Who was FOILING the records?

19 A. I think we have already established that you
20 said it was Jim Odatto and I said I thought it was
21 the media.

22 Q. So, the media was FOILING the executive
23 chamber and you were responding to that FOIL
24 request?

1 A. Yes. I am sending documents, gathering
2 documents as requested by my supervisor and
3 sending the documents to him.

4 Q. And I think you testified earlier that you
5 had never released Senator Bruno's itineraries in
6 response to a FOIL request before?

7 A. To the best of my knowledge, that's true.

8 Q. And you didn't again return to Mr. Valle and
9 follow up with him and ask if it was acceptable to
10 now provide these as part of a FOIL request; is
11 that correct?

12 A. That's correct. And my understanding was
13 and my interpretation was that this is all part of
14 one package.

15 Q. Had you gotten that impression from anybody?

16 A. No. That's my assumptions being in
17 government for 25 years.

18 Q. Had Mr. Valle conveyed that to you?

19 A. I don't specifically recall if he conveyed
20 that, but it was my understanding.

21 Q. Had you ever presented him with a ground
22 itinerary before for review as part of a FOIL
23 request?

24 A. Not to the best of my knowledge, no. At

1 that time, that is.

2 BY MR. TEITELBAUM:

3 Q. Superintendent, when you say that 30 was
4 part of 28 -- was a continuation of 28 --

5 MS. TOOHER: Or are you are saying 5 was
6 a continuation of 28?

7 Q. Yes, that 5 was a continuation of 28.

8 A. I'm not saying 5 is a continuation. I'm
9 saying it's all one set of travel.

10 Q. I understand. So, this is my question. In
11 doing a FOIL review and assessing whether a
12 document should be released or shouldn't be
13 released in whole or in part, in your mind what is
14 the significance of the fact that the ground
15 itinerary document was part of the documents
16 relating to the air travel?

17 A. It's all one trip. It's the executive
18 chamber telling us Senator Bruno is going to the
19 City. Take care of him, for lack of a better way
20 to put it. We fly the aircraft. We pick him up
21 and take him to where he is going. He gets out of
22 the car. He goes in. We stay in the car. He
23 comes out and gets back in. We take him to the
24 next stop. He gets out of the car, he goes in.

1 He gets back in and we take him to his next stop,
2 take him back to the heliport, put him on the
3 helicopter. Once his aircraft is airborne, we are
4 done.

5 Q. Am I correct that in connection with a
6 series of documents that might be requested under
7 FOIL as a part of one transaction, in this case
8 the flight from Albany to New York and
9 continuation on the ground, some of it may be
10 FOILable and some of it may not be FOILable?
11 Would you agree with me?

12 A. I would agree with that. We would look at
13 that and make that determination.

14 Q. You would look at each individual page and
15 say: Should we release this or not?

16 A. Yes. We would look at it, or the State
17 Police would look at it.

18 MR. TEITELBAUM: Okay.

19 BY MS. TOOHER:

20 Q. You mentioned a moment ago that you received
21 a subsequent request from Mr. Howard concerning
22 Senator Bruno's travels. Can you relay that
23 request?

24 A. As I indicated, there were two requests for

1 aircraft documents, and then there was a request
2 for, I believe, three additional itineraries. I
3 don't know exactly when they came in. I called
4 down to New York City and asked them if they had
5 them and they indicated they didn't have those
6 three itineraries.

7 Q. And that's the next request that you recall
8 receiving from Mr. Howard?

9 A. I believe so. Oh, actually, the next
10 request is after I sent the senator requests
11 travel on the 23rd and 24th -- on the 23rd and
12 24th. And, then, I sent an e-mail to Mr. Howard
13 saying: The senator has requested travel. Do you
14 want us to provide this?

15 Q. Why did you reach out to him at that point?

16 A. Because I wanted to make sure they wanted to
17 continue with this process and that they were on
18 board with providing travel to a single, pretty
19 much a single senator; whether it was legitimate
20 or not, basically.

21 Q. And did you have any reason to believe
22 Senator Bruno's travel wasn't legitimate at that
23 time?

24 A. Well, you know, the questions I think I had

1 in my heart were: Why do we do it for the senator
2 and not everybody else?

3 Q. But, did you have any reason to believe
4 Senator Bruno's travels were not legitimate at
5 that time?

6 A. What do you mean by "not legitimate"?

7 Q. I think a moment ago you said that you were
8 concerned about the requests or the travel not
9 being legitimate.

10 A. The process of us handling a single person
11 when we are not pretty much authorized outside an
12 approval by the executive chamber to handle that.
13 You know, we provide travel and protection for the
14 Governor; that's part of our duties. We provide
15 travel and protection for the Lieutenant Governor;
16 that's part of our duties. But it is not a State
17 Police duty to protect elected officials outside
18 of a compelling reason to do that. And,
19 generally, the compelling reason is there is a
20 threat imminent against their life. So, outside
21 that we have no real compelling reason to provide
22 that transportation.

23 Q. And you were just providing transportation,
24 not protection?

1 A. Transportation, yes.

2 Q. And that had been previously allowed or
3 authorized -- I will use your word -- during the
4 Spitzer administration in January, February,
5 March, April, and May; is that correct?

6 A. Yes.

7 Q. And had you received any indication that
8 that authority had been withdrawn?

9 A. No. But, as I said earlier, obviously there
10 is this FOIL request hanging out in the executive
11 chamber. I think as a reasonable person and
12 agency head it is incumbent upon me to ask this
13 question: Do you want us to continue doing this?
14 I don't want to get into an Allan Hevesi situation
15 where they come back and say: You used the
16 resources inappropriately.

17 Q. Did you have any reason to believe that
18 Senator Bruno was using state resources
19 inappropriately?

20 A. I did not, no. But the question of
21 providing the travel to him when you provide it to
22 no one else, and it's not our duty to provide that
23 travel is a question that I think needs to be
24 asked because they are state resources.

1 Q. And did you ask that question of Mr. Howard?

2 A. Yes. I asked: Do you want us to continue
3 providing transportation to Mr. Bruno?

4 Q. But did you ask if this was an inappropriate
5 use of state resources of Mr. Howard?

6 A. No. But I think the question itself would,
7 you know, beg a reasonable person to ask that
8 question for themselves: Is this an appropriate
9 use of State Police resources?

10 Q. But did you ask Mr. Howard: Is this an
11 inappropriate use of state resources, or did you
12 relay to him: This might be an inappropriate use
13 of state resources.

14 A. No. I asked does he want us to continue.

15 BY MS. SULLIVAN:

16 Q. What did Mr. Howard say?

17 A. He then requested the itinerary for Senator
18 Bruno for that trip.

19 Q. Do you know if Howard conferred with anybody
20 on the executive chamber on your question?

21 A. I don't know.

22 Q. Did you confer with Michael Balboni?

23 A. I don't know.

24 (Commission Exhibit 31 was marked.)

1 Q. I am going to show you what has been marked
2 as Commission Exhibit 31, and ask you if this is
3 the e-mail that you sent to Mr. Howard.

4 A. Yes.

5 Q. You indicated a question as to whether or
6 not you should provide the transportation.

7 A. Yes.

8 Q. And you indicate, due the same documentation
9 we previously talked about for this trip.

10 A. Yes.

11 Q. What documentation is that?

12 A. The flight information and the itinerary.

13 Q. When you say you previously talked about
14 this, when did this conversation take place?

15 A. This is the conversation when he first
16 called and asking me for the flight manifests and
17 stuff like that.

18 Q. So, you had a conversation about the flight
19 manifests similar to Commission 28?

20 A. Yes, not --

21 Q. Did you have a subsequent conversation about
22 the individual itineraries?

23 A. No. When he first called, that is what I am
24 referring to: Do you want us to send you this

1 package for this trip.

2 Q. Commission 28?

3 A. Yes.

4 Q. You are asking him if he wants the flight
5 manifest information for this trip?

6 A. Yes.

7 Q. Are you referring to any other
8 documentation?

9 A. No.

10 Q. And you indicated that you reached out to
11 him immediately upon receiving the request; is
12 that correct?

13 A. I would say yes because this just received
14 another request.

15 Q. You did receive a reply from Mr. Howard?

16 A. Yes.

17 Q. Do you recall what that reply was?

18 A. If I remember correctly, it was something
19 about: Fax me the itinerary or send me the
20 itinerary. And I think my reply was, "I don't
21 have the itinerary yet."

22 Q. And, were you aware that Mr. Howard was
23 communicating with anyone else on these
24 itineraries?

1 A. Not that I know of.

2 Q. And what was your understanding as to why he
3 wanted this information?

4 A. To see if he wanted to approve the trip.

5 Q. To see if he wanted to approve the air trip?

6 A. No, to continue with us providing ground
7 transportation.

8 (Commission Exhibit 32 was marked for
9 identification.)

10 Q. I am going to show you a document that has
11 been marked as Commission Exhibit 32.

12 A. Okay.

13 Q. That is your original e-mail to Mr. Howard
14 and then his response to you: "Could you call me
15 with the details?" And your response to him is
16 that you don't have them yet. It's just an
17 inquiry on whether he can get transport. Is that
18 correct?

19 A. Yes.

20 Q. Was Mr. Howard responsible for approving of
21 the trips in the executive chamber?

22 A. That, I don't know. But he was my contact
23 in the executive chamber. He was the person that
24 I reported to in the executive chamber.

1 Q. You are looking for him to approve the
2 ground transportation?

3 A. Looking for him to approve the ground
4 transportation, willing to give me guidance on
5 whether we should do the ground transportation.

6 Q. Had he said anything to you previously about
7 not providing ground transportation?

8 A. No, he had not. But, again, all that's
9 going on --

10 Q. By "all that's going on" you mean the FOIL
11 request?

12 A. For the chamber, yes. I wanted to make sure
13 that Preston Felton is on firm ground.

14 Q. Your understanding is that this information
15 you are providing to him is in furtherance of the
16 FOIL request?

17 A. Yes.

18 Q. And, did you relay to Senator Bruno that you
19 thought there was some sort of heightened review
20 of travel requests?

21 A. No, I didn't. That would be inappropriate
22 on my part.

23 Q. To relate to Senator Bruno that you are
24 looking at these travel requests carefully?

1 A. Yes. I think it would be inappropriate for
2 an agency and for the Executive Department to
3 release to another section of government, you
4 know, they are handling a FOIL request. That's
5 right.

6 Q. I thought you just testified that you were
7 concerned about the propriety of continuing this
8 practice.

9 A. For us. But I'm not going to violate the
10 confidence of the executive chamber. That is, you
11 know --

12 Q. If Mr. Bruno had sent you a ground
13 transportation -- have you ever denied him a
14 ground transportation request?

15 A. To the best of my knowledge, we haven't.
16 But, again, I have not received all of them, so I
17 can't say.

18 Q. Have you set standards for reviewing the
19 ground transportation requests in terms of
20 granting them or denying them?

21 A. I believe the request or the way that was
22 first set up with Superintendent Bennett was that
23 we would approve any ground transportation
24 connected with a flight that was state business.

1 If it was not state business the senator would
2 have to reimburse the State Police general fund
3 for that as personal business.

4 Q. And had you been notified of any change in
5 that policy?

6 A. No, I hadn't.

7 BY MR. TEITELBAUM:

8 Q. Superintendent, if it were the State Police
9 that had been the recipient of a FOIL request for
10 Senator Bruno's ground itinerary do you think it
11 would have been inappropriate under those
12 circumstances to call Bruno's office and say: Do
13 you have a position on whether you want this to be
14 released or do you think that this document
15 contains personal information you prefer not to
16 release or might contain security information,
17 that might contain a personal --

18 A. Well, I think it would be inappropriate.

19 Q. Why is that?

20 A. We have to make a determination. It's a
21 win-lose situation for us. If we -- Say we call
22 the senator and he says don't release the
23 information. And, then, the newspaper or whoever
24 comes back and says we say we can't release the

1 information because Bruno said not to release the
2 information, well, the problem I have with that is
3 how does Senator Bruno -- I mean he may very well
4 be trying to prevent information that the public
5 has a legitimate right to know, how State Police
6 resources are being used from getting out there.
7 You know, we answer to people. It really doesn't
8 matter to me, you know, that he goes to New York
9 City. If he's on official State business, fine.
10 It doesn't matter to me in the least. But the
11 problem is the public has a right to know this
12 information, and attempting to cover up that
13 information is not a good thing.

14 Q. I understand that ultimately a FOIL request
15 to the State Police requires a determination by
16 the State Police as to whether to release the
17 documents or not. My question goes to whether you
18 think it is inappropriate to solicit information
19 from the senator. And let me give you an example,
20 simply a hypothetical. If the senator told you:
21 I don't want the name of the restaurant where I
22 eat with my family after I do -- whatever he does
23 -- because if people in the media know where I am
24 having dinner and find out I am traveling to New

1 York they tend to show up at the restaurant and
2 it's a bother. Do you take that into
3 consideration?

4 A. I would not take that into consideration.
5 And, again, the reason is the senator is using
6 state resources. If you use state resources it
7 generally means you are doing state business. And
8 the fact that you would go to a restaurant is a
9 fact of life as you do state business. That's
10 not a secret. Believe me, over the last three
11 months I have shown up at a lot of places where
12 the press shows up, and I would have preferred
13 they had not followed me, but they followed me
14 there. I can't prevent that. I'm on State Police
15 business. The public has a right to know.

16 Q. Did you release information to the public
17 with respect to when the Governor eats in a
18 restaurant with his family, or did you delete
19 that? Redact it, I mean.

20 A. The Governor is a security issue. We do not
21 provide security to Senator Bruno. And the
22 Governor, as far as I know, is a very open person.
23 But we would probably say on that, that's a
24 security issue.

1 Q. Why would that be a security issue?

2 A. Because he is the Governor of the state. He
3 has a security detail. It's our job to protect
4 him. It makes it that much harder. But I can't
5 speak for Governor Spitzer because I have never
6 worked security for him before. But I can tell
7 you for Governor Pataki who I did on occasion work
8 security for, many times on his public schedule he
9 would show up at events and he was eating and
10 there would be reporters there. It's a fact of
11 life, public life. You were doing the state's
12 business. People are going to want to know what
13 you are doing.

14 Q. Sir, if I understand you correctly, the fact
15 that a public official receives a security detail
16 from the State Police in your mind would determine
17 whether information such as where the restaurant
18 is would be released under a FOIL request or not?

19 A. It may not be the single or sole issue.
20 But, again, we would look at it on a case by case
21 basis to make that determination. But I think the
22 glaring question here that you asked, Mr.
23 Teitelbaum is would I release to Senator Bruno and
24 give him the option of saying what is to be

1 redacted from the State Police record. When he
2 avails himself of our services, State Police
3 resources, unfortunately he has to take all that
4 goes with that. Part of what goes with that is
5 the right of the public to know.

6 Q. I didn't ask you whether Senator Bruno had
7 the option to veto release. The question was:
8 Rather than your input from the Senator
9 concerning, for example, whether an issue might
10 exist with respect to disclosing where he ate his
11 dinners --

12 A. Well, I think he has to call us and say:
13 Listen -- maybe this would be a better scenario.
14 If he called and said: Superintendent, I have
15 been getting threatening phone calls at my house.
16 I am concerned. Would you now do something
17 different? Of course, I would, because he is
18 getting threatening phone calls that could lead to
19 something more, and I have a responsibility to
20 protect him like I do every citizen. But, again,
21 when you avail yourself of resources issued by the
22 state, you have got to take all that goes with it.

23 Q. Privacy does not get implicated?

24 A. Privacy does get implicated. And I can tell

1 you that we have had FOIL requests when we looked
2 at stuff on other people and refused to release
3 certain documentation because of privacy rights.
4 We do that. But the fact that he uses a state
5 helicopter, flies to New York City and then uses
6 State Police transportation to go to an event is a
7 public matter and the public has a right to know
8 he is using state resources.

9 BY MS. TOOHER:

10 Q. I am going to show you what has previously
11 been marked as Commission Exhibit 17, an e-mail
12 from Jeannette Ricardone to Anthony Williams dated
13 May 21, 2007 with regard to providing
14 transportation. Who is Jeannette Ricardone?

15 A. She is the secretary to the First Deputy
16 Superintendent.

17 Q. It appears from the content of this e-mail
18 that this has been forwarded to Troop New York
19 City for transportation to be provided to the
20 senator?

21 A. Yes.

22 Q. Would that be correct?

23 A. Yes.

24 Q. Did you approve forwarding this down to

1 Troop New York City to provide transportation for
2 the senator?

3 A. Not to the best of my knowledge, no.

4 Q. Who would the request have come into for
5 ground transportation for the senator?

6 A. Generally, it would come in to, now, Jim
7 Harney to approve or not approve.

8 Q. Who would it have come in to on 5/21?

9 A. Jim Harney.

10 Q. How were you made aware of the request?

11 A. I don't know that I was ever made aware of
12 this request.

13 Q. Well, you sent an e-mail to Bill Howard and
14 discussed Commission's 32 a moment ago saying you
15 received another request from the Senator for
16 ground transportation.

17 A. I think that was a May 23rd trip. Was there
18 a May 23rd trip?

19 Q. 24th.

20 A. Okay. Then, I would assume Jeannette
21 probably told me about it.

22 Q. So, did you approve the ground
23 transportation?

24 A. Again, this was the trip that I asked for

1 guidance from Bill Howard.

2 Q. You sent the e-mail to Mr. Howard at that
3 time, 4:14?

4 A. Yes.

5 Q. And 4:16 Jeannette Ricardone is e-mailing
6 this down to Anthony Williams to provide
7 transportation. Had you approved that action?

8 A. No. That would be our normal way of doing
9 things. I would say the fact that I didn't
10 disapprove it, she just sent it down.

11 Q. But you had a query with the executive
12 chamber as to whether or not it should be
13 approved; is that correct?

14 A. Yes.

15 Q. And did you alert Ms. Ricardone to your
16 inquiry with the executive chamber?

17 A. I don't know. I don't recall.

18 Q. But she apparently went ahead with the
19 normal protocol and sought to have drivers
20 assigned for Senator Bruno?

21 A. Yes.

22 Q. Did you relay to anyone in your office that
23 you were questioning whether or not you should
24 provide transportation to Senator Bruno?

1 A. Possibly Jim Harney, but I can't be sure.

2 Q. Did you relate to anyone in your office that
3 you were providing documents in response to a FOIL
4 request from the executive chamber to Bill Howard
5 on these trips?

6 A. To Mr. Valle.

7 Q. That was on the manifests?

8 A. On the documents being FOIL requested.

9 Q. I just want to be clear. You spoke to Mr.
10 Valle on the manifest. You didn't speak to him on
11 any other documents that you provided?

12 A. Yes. And both of my secretaries would have
13 been aware of it.

14 Q. But you didn't in any way delay
15 transportation for Senator Bruno?

16 A. No.

17 Q. And did you ever receive a response from Mr.
18 Howard telling you not to provide transportation
19 to Senator Bruno?

20 A. No.

21 Q. And, to your knowledge, did you provide
22 ground transportation to Senator Bruno on May
23 24th?

24 A. To the best of my knowledge, yes.

1 Q. Did you have provide any further information
2 to Mr. Howard concerning ground transportation on
3 the 24th?

4 A. I think I sent him a copy of what -- I
5 believe it was Anthony Williams sent us the
6 schedule. And, then, there was a change like a
7 day or two before, and I sent him that there had
8 been one change in the schedule.

9 Q. So, you sent the changes in the schedule to
10 Mr. Howard as well?

11 A. Yes, on that one occasion I sent the change.

12 Q. That was in advance of the trip?

13 A. Yes.

14 Q. And did you send him the itinerary from
15 Senator Bruno's office?

16 A. I don't believe there was an itinerary from
17 Senator Bruno's office.

18 Q. Did you request an itinerary from Senator
19 Bruno's office?

20 A. I didn't. But, then again, I didn't handle
21 it. This was a separate trip.

22 Q. But, you were in constant contact with Mr.
23 Howard about this trip?

24 A. I wasn't in "constant contact." I sent Mr.

1 Howard an e-mail asking: Do you want us to
2 provide this transportation. And, then, he sent
3 back the request: Get the itinerary. And I sent
4 that to him. This was not a constant contact.
5 This was once, and there was an update and I sent
6 that to him.

7 Q. But you didn't have an itinerary from
8 Bruno's office on this trip, I think you said a
9 moment ago.

10 A. I didn't have like a document like this.

11 Q. Commission 5?

12 A. Commission 5, yes.

13 (Commission Exhibit 33 was marked for
14 identification.)

15 Q. I am showing you what has been marked as
16 Commission's Exhibit 33.

17 A. Yep.

18 Q. And it's an e-mail from you to Anthony
19 Williams dated May 23rd at 9:42. It starts with:
20 Fax me up the latest itinerary on the subject from
21 up here J.B. for the trip that they called about
22 yesterday. Can you identify this document?

23 A. Yes.

24 Q. Can you tell me what it is?

1 A. It's the e-mail from me to Anthony Williams.
2 I say: Fax me up the itinerary. He says: Sorry
3 about the delay. I was out yesterday. That's on
4 the 23rd. And I say, "Okay."

5 Q. And, "I am awaiting the schedule from his
6 office." Do you know what he is referring to?

7 A. That's got to be the itinerary.

8 Q. Had you spoken with Anthony Williams about
9 this itinerary?

10 A. No. This was by e-mail.

11 Q. You didn't have any direct communications
12 with him?

13 A. Not that I know of, because he was out on
14 the 23rd, or whatever.

15 Q. Was there any follow-up on this?

16 A. The e-mail.

17 Q. Was there any subsequent follow-up?

18 A. The e-mail.

19 Q. To this e-mail.

20 A. Oh, none that I know of. But I mean there
21 could be.

22 Q. Did he send you up the documents?

23 A. I think he sent me up like an e-mail with
24 itinerary, as I indicated earlier, if that's the

1 one I'm thinking of.

2 (Commission Exhibit 34 was marked for
3 identification.)

4 Q. I am going to show you what has been marked
5 as Commission's Exhibit 34 and ask you if you can
6 identify this document.

7 A. Yes.

8 Q. And what is this document?

9 A. This is an e-mail that I sent to Bill
10 Howard, again, in response to his saying: Send me
11 the schedule which his response to me saying: Do
12 you want us to provide transportation? And this
13 him saying -- He says, "Schedule of events is as
14 follows." This is the e-mail I was talking about.

15 Q. I note that the original thread on this is
16 from Anthony Williams, May 23, 2007 as per Leslie,
17 "J.B. office schedule is as follows. And, "This
18 was given to me over the phone." Is there a
19 reason that he would make note of that?

20 A. I don't know. You'll have to ask him that.

21 Q. The next thread in the e-mail from you to
22 Mr. Howard, "Forward schedule. FYI: No hard copy
23 on this."

24 A. No itinerary.

1 Q. Is there a reason that you would provide
2 that information to Mr. Howard?

3 A. Because he had asked for the itinerary
4 schedule. I wanted him to know this is what he
5 was going to be receiving and I wasn't going to be
6 faxing him another document.

7 Q. You were telling him there was no itinerary;
8 is that it?

9 A. On this, yes.

10 Q. And Mr. Howard continues this e-mail to
11 Darren Dopp, the Communication Director. Were you
12 aware that Mr. Howard was forwarding this
13 information to Mr. Dopp?

14 A. No.

15 Q. But your understanding is that Mr. Howard's
16 request are in pursuit of a FOIL that is from the
17 executive chamber?

18 A. That is the knowledge I had. And, my
19 understanding, that's what I was operating under.

20 Q. That you were providing him information in
21 response to, or in furtherance of, a FOIL request
22 that was in front of the executive chamber?

23 A. Yes.

24 Q. Did there come a time when you had

1 additional communications with Mr. Howard on Mr.
2 Bruno's schedule?

3 A. I think the only other one was a trip in
4 June. He called and asked me about a trip in
5 June. And I forget the date of it.

6 Q. Did you have further conversations with Mr.
7 Howard concerning itineraries for Mr. Bruno's
8 trips?

9 A. Yes.

10 Q. And, when did that occur?

11 A. I don't know the exact date, but at some
12 point he had called and requested three specific
13 itineraries for trips that Senator Bruno had
14 taken.

15 Q. And do you recall what those itineraries
16 were for?

17 A. For the three trips. And I don't recall
18 what the dates were.

19 Q. How did he request that information?

20 A. I believe that was over the phone.

21 Q. And do you recall what he said to you at
22 that time?

23 A. He wanted the three itineraries. He gave me
24 three dates and he wanted them faxed up to him.

1 Q. He wanted them faxed up to him where?

2 A. To Mr. Howard.

3 Q. So, when you say he wanted them faxed to
4 him--

5 A. Most of the documents were faxed.

6 Q. Most of the documents you have provided to
7 him?

8 A. Yes. They were faxed. I didn't physically
9 take them down there.

10 Q. What did you do in response to that request?

11 A. I called to the City. If memory serves me
12 correctly, I spoke to Major Kopy and had him check
13 for the three itineraries. And he indicated that
14 they did not have the three itineraries. I got
15 off the phone and called Mr. Howard and said they
16 don't have the three that you are looking for.

17 Q. Was there a practice in the State Police of
18 keeping the itineraries?

19 A. Unbeknownst to me, a senior investigator
20 before Anthony Williams -- I think that was Kevin
21 Smith -- kept all the itineraries.

22 Q. But at the time that Mr. Howard made his
23 request were you aware of any practice in the
24 State Police of keeping the itineraries?

1 A. No.

2 Q. I am going to show you what has previously
3 been marked as Commission's Exhibits 22 and 23.

4 A. Okay.

5 Q. Specifically, I am going to direct your
6 attention to Commission Exhibit 22, and note the
7 date on the bottom of that, May 3, 4, and 24. Are
8 those the dates that Mr. Howard was looking for?

9 A. Possibly.

10 Q. Can you identify these documents? Are you
11 familiar with this document?

12 A. This is a State Police fax transmittal form
13 from Kopy to the Superintendent. And this is the
14 document that Kopy faxed up to me later that day.
15 It was after I told Howard we didn't have the
16 documentation, the itineraries. He called back
17 and said, well, do you know what your people did
18 that day? And, then, I called Kopy and said,
19 "Mike, what did our people do that day?" And he
20 said, "I will interview the people and find out."
21 And, then, he called me back and said, "Okay.
22 I've got it." And I said, "Okay. Document it and
23 send it up to me." And this is the form that he
24 sent to me.

1 Q. And, these dates on Commission Exhibit 23,
2 May 3rd and 4th, May 17th and May 24th, are those
3 the dates that Mr. Howard had relayed to you?

4 A. Again, I'm not positive of the dates, but
5 here it says May 3rd, 4th, and 24th. Here it is
6 May 3rd, 4th, and then they have got May 17th and
7 they have got May 24th.

8 Q. When you received this request did you
9 consider it responsive to your request to Major
10 Kopy?

11 A. Yes, I did.

12 Q. And did you forward that to Mr. Howard?

13 A. Yes.

14 Q. And what happened next?

15 A. A short time later he called back and he
16 said, "Can you have these put on a separate piece
17 of paper, each one?" And I said, "I can do that.
18 But understand, these are not Joe Bruno's
19 itineraries. You want it that way, fine. But
20 these are not his itineraries, so if you are doing
21 this as part of a FOIL request, it shouldn't be
22 part of a FOIL request.

23 Q. You specifically recall saying that to Mr.
24 Howard?

1 A. Yes. I said, "This is what our people say
2 they did on this day."

3 Q. And did you discuss with Mr. Howard at that
4 time that you had already provided him with the
5 information for the 17th and 24th?

6 A. No. But he knew that. He had this form.

7 BY MR. TEITELBAUM:

8 Q. When you say "this form," Superintendent,
9 just for the record, what is the number on it?

10 A. 23.

11 BY MS. TOOHER:

12 Q. He also had your prior e-mail and the prior
13 itinerary, Commission Exhibit 5 and Commission
14 Exhibit 33. I believe it's 34; I apologize.

15 A. Yes. He should have had those, yes.

16 Q. Did you ask him why he is requesting this
17 information again?

18 A. No.

19 Q. Did it cross your mind that he was
20 requesting the same information yet again?

21 A. It didn't cross my mind. But, you know, I
22 wanted to make sure this was not the senator's
23 schedule or itinerary.

24 BY MR. TEITELBAUM:

1 Q. When you say "this" you are talking about --

2 A. 23.

3 MR. TEITELBAUM: Thank you.

4 BY MS. TOOHER:

5 Q. So, what did you do next?

6 A. I called Kopy, told him to put it on
7 separate pages. He could either fax it or e-mail
8 it up to me. And, then, a short time later he
9 e-mailed it up and I forwarded the e-mail to Mr.
10 Howard.

11 Q. You forwarded the e-mail to Mr. Howard?

12 A. Yes.

13 Q. And, the e-mail that you received from Major
14 Kopy, had it placed the document on separate
15 paper?

16 A. Yes.

17 Q. And I am going to take you back to
18 Commission 23 and indicate that there are
19 handwritten notes on the bottom of 23 which
20 indicate separate pages, trips for Senator Bruno
21 on bond paper. Major Kopy testified that those
22 were your directions to him. Do you recall giving
23 him those directions?

24 A. I would say they are probably accurate that

1 I gave it to him that way, yes.

2 Q. Were those the directions you received from
3 Mr. Howard?

4 A. Howard says "separate pages" and "these
5 three separate trips to bond paper" might have
6 been me.

7 Q. When you say "bond paper" if this was being
8 e-mailed to you, what does the bond paper
9 reference?

10 A. The single sheet of white paper. You know
11 what I'm asking you. Do one page off a word
12 document or Word Perfect document.

13 Q. How is that different from separate pages?

14 A. I have never thought about how it's
15 different from separate pages. Bond paper it's
16 just what you put it on.

17 Q. But you were having Major Kopy e-mail this
18 to you?

19 A. Not this, the three separates documents.

20 Q. The three separate documents to you, and
21 they were -- you were going to e-mail that to Mr.
22 Howard?

23 A. Yes.

24 Q. So, how is it going to be put onto paper?

1 A. It's not. It's going to be put in a FOIL,
2 then be put on bond paper. It's going to be put
3 on a file, into a file. My recollection is to
4 e-mail it to me. If he had faxed it to me, you
5 would have had to put it on bond paper to do. You
6 have to put it on something.

7 Q. What does bond paper mean to you?

8 A. A single sheet of paper; clean, white.

9 Q. It just is a separate white copy the page.

10 A. Yes. Like at one point, this was bond
11 paper. (Indicating)

12 Q. The trip for Senator Bruno, what is that?

13 A. I don't know.

14 Q. You indicated he wrote those as a
15 consequence of direction from you?

16 A. Again, I can't -- I gave him directions but
17 I don't know why he put the trip for Senator Bruno
18 -- "no."

19 BY MR. TEITELBAUM:

20 Q. Superintendent, up until this point your
21 testimony has been that in your mind what you had
22 been asked to do was in connection with the a FOIL
23 request in the executive chamber; is that correct?

24 A. Yes.

1 Q. Now, you are being asked to do something
2 which you have testified was not a FOIL document?

3 A. Yes.

4 Q. I would like to know what is going through
5 your mind at the point in time that you are being
6 asked to do something that is not a FOIL document
7 anymore?

8 A. I was not positive that he knew it was not a
9 FOIL document. But I wanted to be sure it was
10 clear; that this wasn't Senator Bruno's
11 itineraries that he is asking us to do. This is
12 what our people said we did. He asked us to
13 retrieve the information. The information is
14 obviously lost, but as our supervisor can ask us
15 to try to retrieve the information, sometimes we
16 can do it. Sometimes we don't. I can't say it's
17 lost, you know. We can't retrieve it, so don't
18 call us anymore. We have to make an attempt.

19 Q. So, you are giving him a heads-up that this
20 is not a matter of a FOIL document. You are
21 giving a heads-up?

22 A. In my opinion. And I think the other thing
23 is that this is not, you know, when Bruno sends
24 the itinerary. It's part of this executive

1 chamber travel, a branch, whatever you want to
2 call it. It's not a formal State Police
3 documents, you know. It's not made by us, so it's
4 not our document. The theories are not normal,
5 this is not something you know that we use. It's
6 something that the chamber requested us to do.

7 Q. Up until this point of the request,
8 everything else in your mind were documents that
9 were within the realm of FOIL?

10 A. In my opinion, yes.

11 Q. Now, you have a document that in your
12 opinion is not within the realm of FOIL; correct?

13 A. Yes, sir.

14 Q. And you point that out to Mr. Howard;
15 correct?

16 A. Yes.

17 Q. And, Howard, says, I suspect that he wants
18 the documents provided to him; is that correct?

19 A. Yes, sir.

20 Q. In your mind, what do you think is going on?
21 Be frank with us.

22 A. I didn't know what was going on. But,
23 obviously, my mindset at the point is that it had
24 a reduced somewhat of -- some discomfort in me

1 that I made sure I clarified what this is and what
2 this is not.

3 BY MS. TOOHER: No.

4 Q. Did you express to Mr. Howard that you had a
5 level of discomfort concerning this document?

6 A. I wouldn't say I specifically expressed
7 that, but I think me saying -- understand this is
8 not the senator's itinerary. This is, you know,
9 what you asked for. You can't use it for FOIL.
10 If someone said that to me, it would be clear
11 that, you know, it shouldn't be used like that.

12 Q. When you communicated this to Mr. Howard
13 what did he say to you?

14 A. I don't recall him saying much of anything,
15 other than, you know, send me the document. I
16 have known Bill for ten years. We communicated.
17 He knows me; I'm a fairly quick person on the
18 phone. I have got a lot of stuff to do. He likes
19 to chat somehow, et cetera. It's in his mind that
20 I'm a history buff. I don't care about history;
21 I'm worried about the future.

22 Q. Understand the question. I am not going to
23 ask you as to leading to any aggravation at all.
24 Did it occur to you at that point that there may

1 be a political agenda in existence and this
2 document was being prepared and conveyed to the
3 executive chamber in connection with a political
4 agenda.

5 A. That didn't occur to me. But I will tell
6 you what did occur to me is that because they had
7 asked some other questions about flight costs and
8 stuff -- and I think it was they wanted the
9 senator to pay for some flights. That was my
10 thinking.

11 Q. Okay, I understand. An e-mail: What does
12 it cost to fly a helicopter? We know what it is.
13 I'm trying to think of -- it's the fixed cost
14 versus the overall cost. There's two different
15 costs. One is what it actual costs to fly the
16 helicopter and another cost: What does it cost
17 per year to keep the helicopter in operation.
18 There are fixed costs. One is much higher than
19 the other. We figured it's what does it costs for
20 us to pay for the hangar and pay all the mechanics
21 and stuff.

22 BY MS. TOOHER:

23 Q. Weren't those inquiries in relation to the
24 Governor's flights?

1 A. It was in relation to not necessarily the
2 Governor's flights, but flights in general. This
3 all happened pretty much together. So, truly,
4 that's what I thought it was; that they were going
5 to ask him to pay for the flights.

6 (Commission Exhibit 35 was marked for
7 identification.)

8 Q. I am going to show you what has been marked
9 as Commission Exhibit 35, which is a screen print
10 of an e-mail. This appears to be from Preston
11 Felton to William Howard on June 6, 2007 with
12 three attachments, and ask you if you can identify
13 this document.

14 A. Yes. This is what I am saying. This is the
15 three things that he requested. This is what I'm
16 talking about. And in my memory I can remember
17 seeing this at the computer.

18 Q. I am going to show you Commission Exhibits
19 1, 2, and 3 and give you a moment to look at them
20 and ask you about those documents that are
21 attached to this e-mail.

22 A. To the best of my knowledge, I don't rightly
23 remember opening those up, but these are the three
24 documents, or I'm assuming these are the three

1 documents. I might have opened one of them up,
2 whatever.

3 Q. You are saying you didn't look at the
4 documents before you sent him to William Howard?

5 A. Like I said, I don't remember opening those
6 up. I remember seeing these at some point because
7 I remember the times on the bottom approximately.

8 Q. In your e-mail it says "See attached." I
9 know it's a little hard to read.

10 A. Yes.

11 Q. There is no notation here concerning any
12 limitations on the application or use of these
13 documents?

14 A. No. That was done on the phone verbally.

15 Q. Did you do that before you sent the
16 documents to Mr. Howard?

17 A. I think I did that when he asked for the
18 documents.

19 Q. When he originally asked for the documents?

20 A. When he said: Put them on three separate
21 sheets of paper, that's when I told him that
22 information.

23 Q. And you are clear that when he got these
24 documents, these being Commission's 1, 2, and 3

1 and the e-mail of Commission 35, he understood
2 that the documents that were being sent to him
3 were not accurate itineraries and that you had
4 instructed him -- you didn't believe they were
5 suitable for FOIL?

6 A. I didn't believe they were suitable for
7 FOIL. I can't tell you what he understood. I can
8 tell you what I told him. It should have been
9 crystal clear, but I can't tell you he understood
10 that. That is -- I am assuming he understood
11 that, but I can't tell you that.

12 Q. And Commission Exhibit 5, which is the
13 itinerary from Senator Bruno's office, did you
14 give a similar limitation on this document when
15 you provided it to Mr. Howard?

16 A. No, because this is the actual document.
17 You know, this is an authentic document in our
18 possession. These, at his request.

19 Q. "These" being Commission 1, 2, and 3?

20 A. Yes. These by request were produced by us
21 to say what our people did. These are different
22 than these. These are not authentic, whatever you
23 want to call them. This is a synopsis of what our
24 members did on those dates. These are two

1 separate things. And I want to make sure he knew
2 that, you know, that it's clear that this document
3 is different from this document.

4 Q. Commission 5 is different from Commission 1,
5 2, and 3?

6 A. Yes.

7 Q. Following your transmittal of Commission 1,
8 2, and 3 to Mr. Howard, did you provide any
9 further information to Mr. Howard concerning
10 Senators Bruno's schedules?

11 A. I think he requested it in late June, one
12 other trip. I want to say it was the 27th or the
13 28th.

14 Q. What was his request in that regard?

15 A. Pretty much the same thing, the itineraries
16 and the flight records.

17 Q. And what was your response?

18 A. My response, I remember sending him the
19 itinerary that our members -- again, it was
20 unavailable and our members had synopsisized in
21 another document what they did. I remember
22 sending it to him. I remember discussing it with
23 him. And, if I remember correctly, it was a trip
24 Mr. Senator Bruno had scheduled two stops, one at

1 some event and another one at city hall. It might
2 have been a meeting to meet with Mayor Bloomberg.
3 But I remember discussing it with him. And what
4 happened is that the senator had cut the trip
5 short and he asked me if I knew why the senator
6 had cut the trip short. It's just so happened on
7 that day I was headed to Long Island. A bad
8 rainstorm moved in, and my explanation to Bill was
9 he probably cut it short because the pilot told
10 him a weather front is moving in and we have got
11 to be out of here by a certain time. And we
12 discussed that, and I said, "Bill understand that
13 no pilot who works for me is going to leave a \$10
14 million ship on a barge in the middle of
15 rainstorm. So they know if he's not back in time
16 for them to get the ship out of there, he's
17 not. So, the senator cut the trip short, skipped
18 the meeting at city hall, and came back to the
19 ship so he could get out of there. But I remember
20 that day because I was on the way to an event in
21 Long Island myself. And, at one point I could
22 barely see to drive.

23 Q. I am going to show you what has previously
24 been marked as Commission Exhibit 4 and ask you if

1 you can identify that document.

2 A. This is the document.

3 Q. When you relayed that document to Mr. Howard
4 did you have any limitations on that document?

5 A. I believe I put the same limitations that I
6 put on the other three. This is what our members
7 say they did on those days. This is not an
8 authentic itinerary of the senator. It's just not
9 -- it shouldn't be used to represent this as his
10 itinerary because this is, you know, from our
11 members' memories or notes or something. And I
12 don't want anything in here that is wrong.

13 Q. So, you provided this information with the
14 same caveat; that this wasn't appropriate to be
15 produced in response to a FOIL?

16 A. Yes, FOIL.

17 Q. I am going to show you what previously has
18 been marked as Commission's Exhibit 24. It's an
19 e-mail to you from Thomas Marmian that is relaying
20 the information?

21 A. Yes.

22 Q. How did you receive Commission Exhibit 24?

23 A. I'm not sure if this was annexed to this,
24 but they came up pretty much about the same time.

1 Q. And was that also forward to Mr. Howard?

2 A. I think this was forwarded to Mr. Howard. I
3 don't know if that was.

4 Q. By "this" you are saying Exhibit 4, the
5 transportation --

6 A. 24, I don't know that this was.

7 Q. You believe commission 4 was forwarded to
8 Mr. Howard?

9 A. Yes.

10 Q. But --

11 A. I can't be this one.

12 Q. That Commission 24 was forwarded to Mr.
13 Howard?

14 A. Yes.

15 Q. And, did you, in your e-mail in any way
16 caution Mr. Howard?

17 A. That, I don't know. That, I don't know.

18 Q. Mr. Howard testified before the Attorney
19 General that you never told him that these were
20 recreated documents. He also testified that he
21 never gave you any direction concerning the
22 creations of this document.

23 A. Of which document?

24 Q. Commission 1, 2, 3, and 4.

1 A. Okay.

2 Q. And he was asked: Did you direct the Acting
3 Superintendent to produce any documents in
4 connection with the FOIL request?

5 A. It was not a direction. I was very adamant
6 about that. It was not a /TKOEUFRLPTS
7 /STPHRAOEUPLTS you are advance was not a direction
8 for him to produce those documents. So, when you
9 spoke to the Acting Superintendent you said Darren
10 Dopp had contacted me and it was a FOIL request.

11 Q. What was the nature of your request?

12 A. It was advising him we had gotten a FOIL
13 request.

14 Q. You were not requesting that he do anything?

15 A. No, not really.

16 Q. Your testimony here today is that he
17 specifically directed you to create these
18 documents to place them on separate sheets of
19 paper?

20 A. Paper.

21 Q. And to send them to him in that fashion.

22 A. That is my testimony. And, if I may ask a
23 question, I -- if he had in his possession -- I'm
24 trying to think of which is the document with the

1 three trips on one sheet.

2 Q. Commission 23?

3 A. If he has this in his possession, why would
4 I -- because this satisfies his original request.
5 Why would I take it upon myself to go and to have
6 our people do work that they have already done.

7 BY MR. TEITELBAUM:

8 Q. I understand your point.

9 A. That is my point. My belief here is I don't
10 believe I did anything wrong. I don't have any
11 reason to lie. So just this fact on why would I
12 do that?

13 Q. Commission Exhibit 23, I believe you
14 indicated you e-mailed this to Mr. Howard?

15 A. No. I think this was faxed to him.

16 Q. It was faxed to him?

17 A. Yes. I believe this was faxed to him.

18 Q. Superintendent, you said in your September
19 9th submission to us --

20 A. Yes, sir.

21 Q. -- Mr. Howard was, as far as I know, an
22 operations guy and not a political operative." Do
23 you still stand by that given, in retrospect, with
24 all that has happened here?

1 A. I have to stand by it. And these are my
2 reasons why. I have known Mr. Howard for
3 approximately ten years. I met him shortly after
4 Superintendent McMahon requested that I go to our
5 protective services unit. They were having some
6 issues. The Superintendent knows my reputation,
7 knows I am very good at getting all the ships
8 sailing in the right direction. So, I have known
9 Mr. Howard from that point. I have been working
10 with him over the years. I had seen him manage
11 disaster after major incident, our response to
12 Katrina, all of those things. He was when I first
13 came into my dealings with executive chamber. He
14 was the Deputy Director, I believe, in operations.
15 Subsequent to that, he was made First Deputy
16 Secretary of the Governor -- he eliminated the
17 position of director of operations at the time Mr.
18 Natoli. After about two and a half years at the
19 mansion I left and went to New York City. Shortly
20 after leaving New York City I'm sure you are aware
21 events of 9/11 happened. I was kind of called
22 back into it and spent long hours with the
23 Governor's people working. I was called back into
24 service a number of times to fill in. I have never

1 known him to be a political guy. I'm not a
2 political person. To the best of my knowledge, I
3 have never been to a political event. I do not
4 donate to political candidates. And I have
5 friends who are sheriffs, and stuff. Just early
6 this week I was invited to something, and I told
7 him I don't do that. It's not my style. I have
8 seen nothing up to this event to say he was a
9 political guy. But the other thing is that he
10 comes out of a Republican administration into a
11 Democratic administration. And I don't know what
12 party he is, but it would be unfair to
13 characterize him other than as I know him. I
14 think here, Howard and/or somebody else has drug
15 the State Police into the middle of this. It's an
16 unfortunate event. We are not political people,
17 but he has to be responsible for his actions.
18 Things that I testified to here that I did, I did.
19 You are not going to see me bobbing and weaving.
20 He asked me to put the things on three pieces of
21 paper. He's my supervisor -- I ask a question
22 like this. On what basis can I tell him, hey,
23 this is a check /PWAEUPL /KHER person. On what
24 basis can I tell him I'm not going to show you

1 these records. Or, I'm not going to show these
2 records. I can't think of a basis so the answer
3 to your question is I don't know what he is, but I
4 know from my dealings with him, he was always an
5 operations guy. He never struck me as a type of
6 political --

7 Q. Prior to this episode?

8 A. Prior to this episode.

9 Q. Now, I want to focus on this episode. You
10 said, and I think you testified to this before, so
11 it's absolutely consistent. You said the State
12 Police was dragged into the middle of this. I
13 want to get your frank assessment. The statement
14 was that the State Police was used to political
15 purposes. I am not saying you. I am not saying
16 who, but I want to know because you are the Chief
17 Executive in the agency whether, in retrospect,
18 looking at the course of events that occurred, you
19 believe that the wall that is supposed to exist
20 between politics and State Police was
21 inappropriately penetrated.

22 A. I am of the opinion that even starting with
23 this -- Now, we know Senator Bruno is using our
24 people to drive him to political events. That is

1 clearly inappropriate to me. There is no way
2 around that. Had he called me and said: I want
3 you guys to drive me. I have got a Republican
4 Dinner and whatever, so absolutely not. But they
5 apparently dressed it up nicely, so it looked like
6 you know, it was official states business. And
7 believe me -- but, as far as them bringing us into
8 this, it is tough for me to say. But it's in the
9 back of my mind me thinking Exhibit, clearly we
10 have been drug into a political firestorm here.
11 There's no way to dress that up. The question.
12 Is: Was it intentional or not intentional? I
13 don't have enough information now to answer that
14 question. I can tell you that I am very upset
15 that we are in the middle of this because it is
16 not the way I operate. It's not the way we
17 operate. We are apolitical. Every so often we
18 will get a trooper who gets involved in politics
19 unbeknownst to us, and they are disciplined in no
20 uncertain terms. We believe you have the right to
21 vote but not to get any more political than that.
22 If we get guys on our Governor's detail we think
23 are getting to do these: Hey, time to go Glen
24 Miner. The State Police regulations prohibit

1 political involvement but do grant the right to
2 vote.

3 Q. You look back and see what happened to the
4 documents that you have provided and say: Does
5 that affect your perspective as to whether the
6 State Police has been used politically?

7 A. I think this is a possibility.

8 Q. The fact that you are told there is a FOIL
9 request outstanding but, as it turns out, there
10 was no written FOIL request, does that affect your
11 perspective that, yes, State Police may well have
12 been used politically?

13 A. I think I would agree with that.

14 Q. The documents that you say you specifically
15 gave a caveat that are they were not FOILable
16 documents, you see them ending up in the
17 newspaper, does that indicate to you that there
18 was a political agenda operating here when the
19 State Police were brought in to service that
20 agenda? I am not saying you knew about it. Do
21 you understand my question?

22 A. I understand your question. I can't answer
23 whether there was a political agenda because it's
24 not part of that agenda. But I think a reasonable

1 person could answer the question that there is a
2 possibility. And I'll tell you this. I know the
3 incident has made a big deal about me being upset.
4 I was upset with Bill Howard because I told him I
5 qualify that I discussed here; that these aren't
6 authentic documents. These aren't Joe Bruno's
7 itineraries, so the answer to your question is
8 there some other agenda here. Could there have
9 been some other agenda? I can't disagree with
10 that.

11 Q. Can we get back to your statement? I think
12 the question I asked concerning Howard being an
13 operations guy. In this particular episode, as
14 you look back on it do you think that Mr. Howard
15 was operating as an operations guy or political
16 guy?

17 A. I think when I was going --

18 Q. At your looking back?

19 A. When I was going through this I was under
20 the impression that he was an operations guy. I
21 am a reasonable man. As I look back, I can't say
22 that.

23 BY MS. TOOHER:

24 Q. Superintendent, you gave prior testimony to

1 the Attorney General's Office?

2 A. Yes.

3 Q. And they specifically asked you about
4 Commission Exhibits 1, 2, 3, and 4 and the
5 creation of those documents. And they
6 specifically asked you whose idea it was that the
7 documents be created and up responded that. I
8 don't recall. It was probably Major Kopy. I told
9 him, you know, to document the information and
10 send it to me. And, I can't say it was presented
11 in this form rather than, for example, the e-mail
12 form that you had previously used.

13 Answer: I don't know.

14 Question: When you spoke to Mr. Howard
15 and you told him -- you said, "The itineraries
16 don't exist," do you just explain that part again
17 as to who said what.

18 Answer: He said, if you could interview
19 with the guys flying out, what we the that way,
20 and if then where they drove that, as you
21 testified, I wouldn't usually use the term
22 "recreation"; I would -- it was a synopsis of what
23 our people said they that day.

24 Q. Was it your understanding that you were

1 asked to create such a synopsis?

2 A. No. I think I asked for the synopsis to be
3 created, not that he said: Create this. It was
4 me saying to Kopy, you know, document and send it
5 up to me so that I could send I said to Howard.

6 Q. Did you think this was in connection with
7 the FOIL request?

8 A. Yes.

9 Q. You did?

10 A. Yes.

11 Q. There is nothing in your testimony --

12 A. This is a document I was having Kopy create.

13 Q. I understand that. But there is nothing in
14 your testimony before the Attorney General that
15 indicates that you cautioned Mr. Howard not to
16 provide this in response to a FOIL request or that
17 Howard directed that these documents be put on
18 separate sheets of paper and treated in the
19 fashion that they were. Can you explain that
20 inconsistency?

21 A. One, I would like to read the transcript
22 because, as you know, I have had only an hour to
23 read the transcripts. And I think if you examine
24 it, anyone will see there is a lot of

1 inconsistencies there. My interview there took
2 place on day two of this investigation when they
3 called me down in a hurry to their office. The
4 A.G. called me, I believe, on the 10th and said,
5 "Would you be willing to cooperate?" And I said,
6 "Absolutely." And by 5:30 the next day I was down
7 there. I had no chance to review any records or
8 documents. But somewhere in my -- if my
9 recollection serves me correctly, they asked me if
10 I told him that these were not to be used for
11 FOIL. And I remember specifically saying that.
12 So I don't know if it's in a different section of
13 the report or whatever. But I remember telling
14 him that. I mean it would make no sense for me to
15 create these documents. I told Kopy to document
16 it and send it up. And that's this document right
17 here. I sent this to Howard. He calls back and
18 says, "Did you put them on this separate sheets of
19 paper?" I don't understand why I would do that.
20 To me, it makes no sense for me to do that.

21 Q. I understand that that's your testimony, and
22 that's why I am giving you an opportunity to
23 reconcile what you are saying with what appears to
24 be at odds. And we will certainly search the

1 record in terms of your testimony. I just want to
2 be clear on the record here today that your
3 testimony concerning these three documents,
4 Commission 1 through 4, were created in the
5 fashion that you have described today and in
6 response to a direct request from Howard to do so.

7 A. Let me say this. The splitting up of these
8 documents from this one page to the three separate
9 pages were created at the request of Mr. Howard,
10 okay, the actual creations of this document.

11 Q. "This document" being commission 23?

12 A. 23. This one, I believe, Kopy created when
13 I called him and said to document it and send it
14 up.

15 Q. And your recollection is that you forwarded
16 Commission 23 to Mr. Howard?

17 A. Howard, yes.

18 Q. And that he requested that you place it on
19 the separate sheets of paper with the captions on
20 it?

21 A. He didn't say captions. He said place it on
22 separate sheets of paper. I didn't call Kopy and
23 say: Separate sheets of paper and he then mailed
24 that up. And, if my memory serves me correctly, I

1 just forwarded the e-mail to Howard. It's a
2 possibility that I faxed them, but I remember
3 sending them to Howard. And I get no more calls
4 from him on that matter.

5 BY MS. TOOHER:

6 Q. At the time that you sent them, sent
7 Commission 1, 2, and 3 to Mr. Howard, you
8 specifically call I would your testimony here
9 today /THAUPL?

10 A. Not at the time that I sent it. When he
11 asked for it, when he said -- my recollection says
12 when he said put them on three separate sheets of
13 paper, that's when I gave the caveat. I said,
14 "Remember, these are not Joe Bruno's itineraries.
15 These are what our people did."

16 Q. It is your testimony that you specifically
17 advised him that these documents are not suitable
18 for production in a FOIL requests?

19 A. Or something to that effect; I am not going
20 to say I used that exact language, but something
21 to that effect.

22 Q. And before coming here today did you discuss
23 your testimony with anyone?

24 A. No.

1 Q. Have you discussed your testimony with
2 anyone from the executive chamber?

3 A. No. I have not spoke to anyone from the
4 executive chamber other than Mr. Balboni on
5 homeland security issues.

6 Q. Did you discuss your testimony with Mr.
7 Valle?

8 A. I have not discussed my testimony with Mr.
9 Valle. I have discussed this case going back to
10 when this thing first started. Mr. Valle was with
11 me in the Attorney General interview and the
12 District Attorney. And I thank you for allowing
13 me to be here on this. But I have not discussed
14 my testimony with him with regards to any of this.
15 I believe any testimony speaks for itself. I'm
16 not a liar. I don't have any reason to lie. I
17 don't think I did anything wrong here. And I
18 would say this. When you go through your e-mails
19 do you see any conspiratorial conduct on the part
20 of Preston Felton? If I wanted to "get" Joe Bruno
21 wouldn't you see an e-mail: Hey, we could use
22 this against Joe Bruno. There's none of that. I
23 don't operate on that premise. I am just trying
24 to do my job.

1 MS. TOOHER: Off the record for a
2 second.

3 (Recess taken)

4 (Commission Exhibit 36 was marked for
5 identification.)

6 BY MR. TEITELBAUM:

7 Q. Superintendent, I want to show you what has
8 been marked as Commission 36. Take a moment to
9 read it and then let me know if you recognize it.

10 A. Yes, sir.

11 Q. Tell us what this is, please.

12 A. This is an e-mail. And I think it was
13 probably June 28th sent to me by Bill Howard and
14 asking if a threat assessments had ever been done
15 on Senator Bruno. At the time when this came in,
16 if I remember correctly, I was over in
17 Massachusetts at a CARE event for accident
18 reduction, something like that. And I was asked
19 about this. And, as you can see, my response was
20 that I think this may have went to -- This was the
21 time it had he been on my back burner for awhile.
22 And my response is a new Social Security issue. I
23 know that because the last year but Howard wanted
24 a threat assessment done. And, then, my question

1 was: What if the senator when I am talked to him
2 on the phone, what if he doesn't want a threat
3 assessment done?

4 Q. This is a conversation that you are having
5 with Howard -- -

6 A. Because what happened is when I got the
7 original e-mail -- and I don't think this is the
8 original one. I was about to take off and go to
9 Massachusetts. I sent the e-mail to staff
10 inspector Gary Berwick. Check on this. It got
11 kicked because I had in my Blackberry program Gary
12 Berwick's old e-mail address. And then I resent
13 the e-mail: Check on this to see if he ever had a
14 threat assessment. But that was as a direct
15 request of Bill Howard. And, as you can see here,
16 I am telling him I know he has threat against him
17 because I have handled at least one of those
18 threats against him.

19 Q. When did the concept of threat assessment
20 come into existence?

21 A. It came into existence not too long ago, but
22 at the behest of the Ethics Commission. The first
23 time that I remember us ever doing that was when I
24 think Comptroller Hevesi wrote the Commission and

1 asked if we could provide security for his wife.
2 That was years ago, not the most recent one. And
3 the commission advised you would have to check
4 the records to get an independent threat
5 assessment. He then comes to us and we do the
6 independent threat assessment. Basically, the
7 threat assessment said "low" and we provided the
8 drivers and security anyway. As you know, last
9 year it somehow came to a head and the commission
10 asked follow all of our documentation and we
11 provided the commission with all of that
12 documentation. But, other than Hevesi, the only
13 other people that I know of who are not our
14 protectees that had a threat assessment is
15 DiNapoli at his request when he had taken over.
16 And that came from his First Deputy asking for a
17 threat assessment. And I remember talking to her
18 on the phone and said: He is the manager of a
19 \$150 billion trust fund. Of course, he needs a
20 threat assessment and we did one. And it
21 basically shows there is a certain threat level.

22 Q. So, Hevesi and DiNapoli asked for the threat
23 assessment?

24 A. It says: Can we have a threat assessment?

1 Q. Am I correct that no one else asked for a
2 threat assessment?

3 A. We did a threat assessment, I believe --
4 again, don't holds me to this -- at the request of
5 the Ethics Commission for Governor Pataki as far
6 as his leaving office. We did a threat assessment
7 and sent the documentation here. And your reply
8 is: Leave it is up to the professionals to
9 determine whether he is at a threat level that
10 requires protection. And, shortly that, we began
11 protection for him.

12 Q. So before the Hevesi request there was no
13 such thing as a threat assessment done; is that
14 correct?

15 A. To the best of my knowledge, not by us,
16 other than for our protectees, the Governor's
17 family, and the Lieutenant Governor's. We always
18 do an assessment when a new Lieutenant Governor.
19 We do their house. Get an alarm. Be careful
20 about the vendors they use. We do the same thing
21 for the Governor. In Pataki's case I wasn't there
22 when they did the threat assessment for him. But
23 they took she step, installed an alarm system,
24 canal /RAOE /SAEUFPLTS get wrought iron so you

1 couldn't get through it, that type of thing.

2 Q. So, when Howard asks you in Exhibit 36:

3 "Did the flying senator ever have a threat

4 assessments done by S.P., State Police, go back to

5 the Hevesi period because there was no such thing

6 as a threat assessment on people you were not

7 providing security for prior to that point in

8 time?

9 A. To the best of my knowledge.

10 Q. That's what I am asking you about.

11 A. Let me just give you one qualifying thing.

12 If we had a complaint, an active complaint where a

13 threat is made against a senator, we would assign

14 personnel to protect him. As luck has it, two or

15 three weeks ago we received a complaint from the

16 Legislature to complaining they received death

17 threats and we put state police personnel with

18 them for -- on a limited time because the person

19 eliciting the threat said specifically, that you

20 are going to be dead by this dates, so we covered

21 them with protection on that date, which we would

22 do for almost anybody, raise that level of

23 security for them.

24 Q. Then, Howard asks in that Exhibit 36: Have

1 we ever documented death threats against him or
2 received, forwarded the complaint or letter for
3 action/analysis, I take it your remark and
4 response --

5 A. I know he has had some security issues in
6 the last couple of years that were of concern to
7 us. One in particular was a guy who got into his
8 office. It was a response to that inquiry by
9 Howard, correct, yep. And I do know that for a
10 fact because I remember dealing with that threat.
11 And it was some guy, believer it or not, who went
12 to high school with the senator sixty year ago --
13 sixty-five years ago.

14 Q. And, I take it, that you didn't as a result
15 of the information that you had concerning the
16 episode, you just described the guy got into the
17 senators office. You talk about security issues,
18 which is in the plural, not singular.
19 Notwithstanding that, you had not done a threat
20 assessment with respect to the senator; correct?

21 A. No.

22 Q. Are we correct in characterizing what you
23 were saying here is explicitly, or implicitly, we
24 had not done a threat assessment, but there were

1 some threats?

2 A. Yep. And I believe -- I want to say it was
3 two or three -- not per se threat but the guy
4 pushing himself into our office and having been
5 trained in the assessments is something that you
6 have to be concerned about.

7 Q. Not someone making a threat to the senator,
8 but a situation that might be threat issues, I
9 would call it an approach on a public official, is
10 what he refer to it, had you done a threat
11 assessment?

12 A. As you say, pending, tell me if I'm am wrong
13 that you would consider that in doing the
14 assessment.

15 Q. Yes.

16 A. Let me just say one thing; that I just
17 remember. I remember in my conversation with him,
18 him saying --

19 Q. "Him" being --

20 A. Howard. Howard saying I would think of the
21 threat assessment against the senator is low. And
22 my response was, "I don't agree with that. I
23 think it depends on where he is you know."

24 Q. Geologically, as you mean by.

1 BY MR. TEITELBAUM:

2 Q. Yes. Tell us what you meant by that.

3 A. In his office, the Capitol is a fairly safe
4 place. He has a Sergeant-at-Arms. In New York
5 City nobody knows him. But, if somebody wants to
6 get him, there are places where there is a routine
7 for him that if somebody really wanted to get him,
8 it may create a problem. I'm not sure if you are
9 familiar with what they call the ramp in the
10 Capitol. It is that area where the Governor,
11 Lieutenant Governor, Spike, I'm sorry, Speakers.
12 Comptroller, the Attorney General, they have a
13 care of the ramp is stopped you make a left turn
14 onto State Street. For me when I was at the
15 Capitol I was anticipated. Or because a
16 principal's vehicle has to stop and may have to
17 wait into traffic.

18 Q. I suspect also just routine if somebody has
19 a routine and somebody and wants to harm a firm
20 and those that routine that that could be a
21 problem?

22 A. The who don't keep a very routine schedules
23 are a lot less likely to be at a threat level.
24 So, if a person goes to Washington Park twice a

1 month at different times, there would be in my
2 opinion very little concern there. But if you go
3 every day like I walked. I drive every day to
4 work the same way I get out of my car at about the
5 same time in the morning. So if someone wanted
6 me, it's very easy to get me.

7 Q. I understand. So, when Howard said to you
8 they claim he needs that Security because of death
9 threats I am not hearing you say in your testimony
10 today: Oh, no. He doesn't needs it. You didn't
11 tell him that.

12 A. No.

13 Q. What you told him is that you thought that
14 the assessment had a /HAURD was giving that there
15 was a low security assessments from Howard point
16 of view, from your point of review that was not
17 accurate?

18 A. Exactly. I would not agree that any public
19 official has an outright low threat assessment
20 because that can change at any moment, you know.
21 The senator can get a bill vetoed that really
22 hypes some nuts off there. And his threat
23 assessments can go from medium to high in a matter
24 of three or four minutes. So, I am very, very

1 careful to say you will find us very, very careful
2 to say somebody has -- a public official -- has a
3 low threat assessment. And, again, we have only
4 done it three or four times, but we have done it
5 for governors and Lieutenant Governor's, we have
6 done it for not so much us, but when visiting
7 Governors come into New York City we always ask
8 what as his threat level because we generally
9 provide one police officer and one vehicle, but I
10 will give you an example. We never used to give
11 for every Lieutenant Governor, but when mark
12 "insurance, week" Kevin was Lieutenant Governor of
13 Pennsylvania, Lieutenant Governor Schweiker was
14 always out front on the Amahd Jamal thing. When
15 they called us and said he's coming to town we
16 brought a security detail with him because we
17 recognized that his threat level was a lot higher
18 than the average Lieutenant Governor. The average
19 Lieutenant Governor, nobody knows who they are.
20 You can walk down the street.

21 BY MR. TEITELBAUM:

22 Q. It's not true of Senator Bruno. A lot of
23 people know who is.

24 A. That's true of upstate. A lot of people

1 know who is.

2 Q. He refers to the senator as the "flying
3 senator." What was your impression of that
4 characterization?

5 A. I didn't personally -- this is my personal
6 feeling, I don't have a lot of information to base
7 it on. I don't think Bill Howard likes Joe Bruno,
8 if I was to be honest.

9 Q. Personally to communicate a negative?

10 A. Contagious about Senator Bruno. And I have
11 always gotten along well with the senator.

12 Q. Then he says at the bottom here, "They claim
13 he needs S.P. -- I'm sorry, withdrawn. They say
14 in the next to last line, "Defense reminds me of
15 Hevesi, and I am curious why he is sharing with
16 you, that kind of thought processes that he is
17 having. My question is: What was your reaction
18 to reading that?

19 A. I can't tell you what my reaction was to
20 that. But, shortly before the article came out a
21 reporter had questioned Bruno's staff about this
22 and we were made aware of that from Bruno's staff
23 that this article was coming out.

24 Q. Who at Bruno's -- I mean this is a staff

1 person at Senator Bruno's staff who contacted the
2 State Police?

3 A. He said, "We hear a reporter is sniffing
4 around."

5 Q. Were they asking you to do something? By
6 "you" I mean the State Police.

7 A. No.

8 Q. They were just giving you a heads-up?

9 A. Just giving a heads-up.

10 Q. The reason I am asking you about this
11 particular line, "Defense reminds me of Hevesi" --
12 and you tell me if I have got this wrong -- it
13 seems to be moving into no longer simply a
14 business-like request of the State Police for
15 information, but now it is showing a point of view
16 on the part of Howard. Did you read it that way?
17 Were you surprised to see this?

18 A. I would have to say yes. And, as I said,
19 you know, when he hit me with this low threat
20 assessments thing, that's why I came back and said
21 I know he has some security issues and I don't
22 think a low rating would be appropriate for him.
23 So, as I look at this I agree that it is going
24 from saying as a FOIL request to looking like, as

1 you said earlier, taking a shot at the senator.

2 Q. In sharing with you his perspective, Senator
3 Bruno's office was launching a "defense" and that
4 reminded him of Hevesi. And his remark to you
5 that he thought that Bruno would have a low
6 threats assessment was contrary to your view. You
7 read into his remark that he is looking for a
8 particular position from you that, in fact, it
9 would be a low assessments?

10 A. Legitimately I would have to say yes, which
11 is why I said I don't agree with that. So, any
12 threat assessments that we were going to do is
13 going to be by the book. And it's going to say
14 what the threat is. I am never going to send
15 somebody out, a public official or anybody else
16 out there to have a threat and somebody comes back
17 and says, well, you know you said this guy was low
18 but he's dead now, because bottom line is that I
19 am the bag holder. But I don't agree with this
20 assessment as being a low threat. And, to be
21 honest with you, this made me wonder here.

22 Q. If you mean 36 answered conversations that
23 you had with him --

24 A. Yes.

1 MR. TEITELBAUM: I don't have anything
2 else.

3 BY MS. TOOHER:

4 Q. E-mail 36 is dated June 29th. You then get
5 the subsequent request.

6 MR. TEITELBAUM: Let me correct that.
7 There are two dates on here.

8 Q. The 28th and 29th. You then get the
9 subsequent request for the June 26th itinerary.
10 Did you have any thought at that time what the
11 continuing request now for the senator's
12 itineraries was about?

13 A. I would have to see when we got the
14 requests. And I think the request for the one
15 actually was the second.

16 Q. July 2nd --

17 A. And I don't know when the article came out.

18 Q. July 1st.

19 A. So, you know, at this point Preston Felton
20 -- excuse my language. At this point, Preston
21 Felton is thoroughly pissed off because they
22 represented those three documents as authentic and
23 used it that way. When I say I was angry and told
24 him I was angry, that's when that happened the

1 morning after this article came out. So, at this
2 point I am thinking we have been drug into
3 something that we shouldn't have been at this
4 point. I am thinking like you are thinking that
5 it's something; not -- personally attacking Joe
6 Bruno. There is no other way for me, to put it --
7 I'm thinking. Can I prove it, no.

8 Q. Did you talk to Captain Marmian or anyone
9 else when providing this response July 2nd, on yet
10 another itinerary on Senator Bruno about your
11 concerns in that regard?

12 A. No, not that I recall.

13 Q. You just continued to respond to the
14 requests?

15 A. It was a request from him. I have to
16 respond to that.

17 MS. TOOHER: I think that's it.

18 Thank you very much for your testimony
19 today.

20 (The interview was concluded at
21 approximately 4:30 p.m.)

22

23

24